

Exhibit 91



experience *does* matter

CASE: In Re: Pharmaceutical Industry AWP
DATE: March 20, 2008

Enclosed is the Original of the transcript of the testimony of **David Fishman** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x
In re: PHARMACEUTICAL INDUSTRY) MDL DOCKET NO.
)
AVERAGE WHOLESALE PRICE) CIVIL ACTION
)
LITIGATION.) 01CV12257-PBS
----- x

VOLUME II

The videotaped 30(b)(6) deposition of ABBOTT (DAVID FISHMAN), called by the United States for examination, taken pursuant to subpoena and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Rachel F. Gard, Certified Shorthand Reporter, at 77 West Wacker Drive, Suite 3500, Chicago, Illinois, commencing at 8:35 a.m. on the 20th day of March, A.D., 2008.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 U.S. DEPARTMENT OF JUSTICE</p> <p>4 CIVIL DIVISION</p> <p>5 MS. ANN ST. PETER-GRIFFITH</p> <p>6 99 N.E. 4th Street</p> <p>7 Miami, Florida 33132</p> <p>8 Phone: (305) 961-9003</p> <p>9 Email: ann.st.peter-griffith@usdoj.gov</p> <p>10 On behalf of the United States;</p> <p>11</p> <p>12 ANDERSON, LLC</p> <p>13 MR. C. JARRETT ANDERSON</p> <p>14 208 West 14th Street</p> <p>15 Suite 3-B</p> <p>16 Austin, Texas 78701</p> <p>17 Phone: (512) 469-9191</p> <p>18 Email: jarrett@anderson-llc.com</p> <p>19 On behalf of the Relator Ven-A-Care of the</p> <p>20 Florida Keys, Inc.;</p> <p>21</p> <p>22</p>	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 DAVID FISHMAN</p> <p>4 Examination by Ms. St. Peter-Griffith 370</p> <p>5 Examination by Mr. Anderson 676</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 FISHMAN EXHIBIT PAGE</p> <p>9 Exhibit Fishman 008 ABT-DOJ 0395435 - ABT-DOJ</p> <p>10 0395586 370</p> <p>11 Exhibit Fishman 009 Additional Abbott-produced</p> <p>12 compliance documents with</p> <p>13 no Bates numbers 372</p> <p>14 Exhibit Fishman 010 ABT-DOJ 0397104 - ABT-DOJ</p> <p>15 0397214 and ABT-DOJ</p> <p>16 0398240 - ABT-DOJ 0398285 374</p> <p>17 Exhibit Fishman 011 Letter to Abbott from the</p> <p>18 United States Department</p> <p>19 of Justice dated September</p> <p>20 30, 1999 444</p> <p>21 Exhibit Fishman 012 AR 00887 - AR 01013 487</p> <p>22 Exhibit Fishman 013 ABT-DOJ 316016 552</p>
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<p>1 JONES DAY</p> <p>2 MS. TONI-ANN CITERA</p> <p>3 222 East 41st Street</p> <p>4 New York, New York 10017</p> <p>5 Phone: (212) 326-3939</p> <p>6 Email: tcitera@jonesday.com</p> <p>7 On behalf of Abbott Laboratories and the</p> <p>8 deponent.</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT: Stephan Hoog</p> <p>12 (Legal Visual Services)</p> <p>13</p> <p>14</p> <p>15 * * * * *</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 EXHIBITS</p> <p>2 FISHMAN EXHIBIT PAGE</p> <p>3 Exhibit Fishman 014 ABT-DOJ 351271 - ABT-DOJ</p> <p>4 351270 570</p> <p>5 Exhibit Fishman 015 ABT-DOJ 335485 - ABT-DOJ</p> <p>6 335487 585</p> <p>7 Exhibit Fishman 016 ABT-DOJ 307075 595</p> <p>8 Exhibit Fishman 017 Document retained by</p> <p>9 Ms. Citera based on</p> <p>10 privilege 599</p> <p>11 Exhibit Fishman 018 ABT-DOJ 340984 - ABT-DOJ</p> <p>12 340985 601</p> <p>13 Exhibit Fishman 019 ABT-DOJ 340986 - ABT-DOJ</p> <p>14 340987 606</p> <p>15</p> <p>16 CERTIFIED QUESTION</p> <p>17 QUESTION PAGE</p> <p>18</p> <p>19 Q. Okay. Outside of the kind</p> <p>20 of big-sky picture that Abbott</p> <p>21 complies with laws, does</p> <p>22 Abbott have a position on</p>

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<p>1 whether or not those laws 2 require Abbott to publish 3 catalog or list prices that 4 reflect the prices paid by 5 providers? 692 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 Rachel Gard from Henderson Legal Services. Can you 2 please swear in the witness. 3 (Witness sworn.) 4 MS. ST. PETER-GRIFFITH: Before we get 5 started, Mr. Fishman, I have some statements to put 6 on the record. First, the United States at the end 7 of this deposition on Wednesday, the 12th, 8 requested time for a second day with this witness. 9 The United States was not notified until 10 Tuesday of this week, less than two days ago, via 11 email, while she was -- counsel was notified while 12 she was in a deposition that Jones Day knew she was 13 going to be in that the only day that was going to 14 be offered for Day 2 of Mr. Fishman was the 20th, 15 which has caused considerable problems for the 16 United States given the short notice of this date. 17 We are here today, but it has been very 18 difficult to get here; and it has been at 19 considerable expense to the United States given the 20 short notice. 21 Additionally, documents were furnished 22 after Mr. Fishman's original deposition date that</p>
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<p>1 THE VIDEOGRAPHER: This is Stephan Hoog 2 representing Henderson Legal Services. I'm the 3 operator of this camera. 4 This is the videotaped deposition of 5 David Fishman. It's being taken pursuant to the 6 Federal Rules of Civil Procedure on behalf of the 7 plaintiffs. We are on record March 20th, 2008. 8 The time is 8:34 a.m. as indicated on the video 9 screen. We are at the offices of Jones Day, 77 10 West Wacker Drive, Chicago, Illinois? 11 This case is captioned, Re: 12 Pharmaceutical Industry Average Wholesale Price 13 Litigation, Case No. 01-12257-PBS. 14 Will the attorneys please identify 15 themselves for the video record. 16 MS. ST. PETER-GRIFFITH: Ann St. 17 Peter-Griffith, United States Attorney's Office for 18 the Southern District of Florida on behalf of the 19 Unites States. 20 MS. CITERA: Toni Citera from Jones Day on 21 behalf of the defendant and the witness. 22 THE VIDEOGRAPHER: The court reporter today is</p>	<p>1 are additional compliance documents. And what I'd 2 like to do is have the court reporter mark this 3 next, this stack of exhibits as the next exhibit. 4 And the next number in order is 8. 5 (Exhibit Fishman 008 6 marked as requested.) 7 8 9 WHEREUPON: 10 DAVID FISHMAN, called as a witness 11 herein, having been first duly sworn, was examined 12 and testified as follows: 13 EXAMINATION 14 BY MS. ST. PETER-GRIFFITH: 15 Q. If I could have the -- Good morning, Mr. 16 Fishman. I'm sorry. 17 A. Good morning. Sorry. 18 Q. Mr. Fishman, I'll represent to you that 19 those are exhibits that were FedEx'd to my office 20 on Monday of this week. And if I could just have 21 you look at them, they've been represented as 22 additional Abbott compliance documents. If you</p>

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<p>1 could just briefly look them over and see if that's</p> <p>2 your understanding of what these documents are.</p> <p>3 A. This is not part of this (indicating).</p> <p>4 It looks like a stand-alone document.</p> <p>5 Q. I believe it is. Mr. Fishman, I will</p> <p>6 have to tell you, they produced it to me so --</p> <p>7 A. Okay.</p> <p>8 Q. And each blue sheet represents a separate</p> <p>9 document that was produced to us.</p> <p>10 A. Okay. Could you repeat the question?</p> <p>11 Q. Sure. Do those all appear to be</p> <p>12 documents either memorializing compliance policies</p> <p>13 or practices or issues or representing</p> <p>14 presentations concerning the same?</p> <p>15 A. Yes.</p> <p>16 Q. And, Mr. Fishman, I'll represent to you</p> <p>17 that also a DVD was produced together with these --</p> <p>18 with those documents. And I'm going to have this</p> <p>19 marked, this file --</p> <p>20 MS. ST. PETER-GRIFFITH: I'll just represent,</p> <p>21 Toni, it's just what we printed off the disk.</p> <p>22 Could I have this file folder, which does not have</p>	<p>1 are additional compliance-related materials from</p> <p>2 Abbott or within Abbott.</p> <p>3 A. Without going -- Yes, generally it</p> <p>4 appears to be a compliance document.</p> <p>5 Q. Okay.</p> <p>6 A. Or documents reflecting compliance on a</p> <p>7 disk.</p> <p>8 Q. Well, I'll tell you that that's what they</p> <p>9 were represented to us as being. So I just wanted</p> <p>10 you to confirm. And, sir, for Exhibit 10, which is</p> <p>11 soon to be marked --</p> <p>12 A. Excuse me.</p> <p>13 Q. -- which have a Bates range of 039704 --</p> <p>14 104, I'm sorry -- through 0398285. I'm going to</p> <p>15 represent to you that these are what was identified</p> <p>16 to me as being additional compliance documents</p> <p>17 produced by Abbott. They were produced to the</p> <p>18 United States via hand delivery at about 10:00</p> <p>19 o'clock last night to my hotel. Oh, she's got to</p> <p>20 mark it, sir.</p> <p>21 MS. CITERA: Is that this pile?</p> <p>22 MS. ST. PETER-GRIFFITH: Yes.</p>
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<p>1 Bates labels on them --</p> <p>2 MS. CITERA: The disk did.</p> <p>3 MS. ST. PETER-GRIFFITH: The disk did, yes.</p> <p>4 And I'm sorry. I don't have that. And if I could</p> <p>5 --</p> <p>6 MS. CITERA: We can get a Bates number on the</p> <p>7 break?</p> <p>8 MS. ST. PETER-GRIFFITH: Okay. Why don't we</p> <p>9 do that. If I could just represent that Exhibit --</p> <p>10 what's going to soon-to-be-marked as Exhibit 9</p> <p>11 represents our print-off of the documents that were</p> <p>12 on that disk.</p> <p>13 MS. CITERA: Do you have a copy of that for</p> <p>14 me?</p> <p>15 MS. ST. PETER-GRIFFITH: I don't.</p> <p>16 MS. CITERA: Okay.</p> <p>17 (Exhibit Fishman 009</p> <p>18 marked as requested.)</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Mr. Fishman, if I could just have you</p> <p>21 flip through those pages and see if you can</p> <p>22 identify what they might be and confirm that they</p>	<p>1 (Exhibit Fishman 010</p> <p>2 marked as requested.)</p> <p>3 BY THE WITNESS:</p> <p>4 A. Yes, these appear to be additional</p> <p>5 compliance, generally compliance documents.</p> <p>6 Q. Sir, can you tell me from your exhibits</p> <p>7 which I will put in front of you, these are not the</p> <p>8 originals that were marked but I'll represent to</p> <p>9 you they were copied, from the materials that we</p> <p>10 went over at your last deposition and then</p> <p>11 including these materials, can you today represent</p> <p>12 that all of the documents that are compliance</p> <p>13 materials, Exhibits 1, that have been produced to</p> <p>14 the United States, Exhibit 1 from last week's</p> <p>15 deposition, and Exhibits 8, 9, and 10, do those</p> <p>16 represent for the period from 1991 until 2003 the</p> <p>17 sum total of Abbott's compliance policies and</p> <p>18 materials?</p> <p>19 MS. CITERA: Objection to the form, outside</p> <p>20 the scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I can't say with certainty that it's the</p>

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<p>1 sum total.</p> <p>2 Q. What additional documents do you think</p> <p>3 might be out there?</p> <p>4 MS. CITERA: Objection to the form, outside</p> <p>5 the scope.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I wouldn't -- I wouldn't know which</p> <p>8 additional documents existed.</p> <p>9 Q. What has Abbott done to undertake a</p> <p>10 search for its compliance materials?</p> <p>11 MS. CITERA: Same objections.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I understand there was -- there was a</p> <p>14 document hold through litigation as part of this</p> <p>15 litigation. And people, numerous people were</p> <p>16 identified through that and files were reviewed and</p> <p>17 documents like this were identified through the</p> <p>18 file, through reviewing the files.</p> <p>19 Q. How can the United States know what</p> <p>20 additional compliance materials are out there? Is</p> <p>21 there a way to identify that?</p> <p>22 MS. CITERA: Objection to the form, outside</p>	<p>1 whether or not Abbott still considers these to be</p> <p>2 highly confidential documents.</p> <p>3 MS. CITERA: Okay.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Okay. Now, Mr. Fishman, preliminary</p> <p>6 matters out of the way, can you tell me what you've</p> <p>7 done in between now and your -- and the last time</p> <p>8 we were here, last Wednesday, to prepare for</p> <p>9 today's deposition?</p> <p>10 A. I had three additional brief</p> <p>11 conversations. The first was with Brian Taylor,</p> <p>12 with Rick Matea, and with Virginia Tobiason.</p> <p>13 Q. Okay. And what did you discuss with Mr.</p> <p>14 Taylor?</p> <p>15 A. I had a brief conversation over the phone</p> <p>16 that lasted less than ten minutes --</p> <p>17 Q. Okay. You're anticipating my questions.</p> <p>18 A. Should I not?</p> <p>19 (Continuing.) -- pertaining to the</p> <p>20 compliance activities that he would have known</p> <p>21 about or been involved in from '91 through '95</p> <p>22 specifically with respect to the Home Infusion</p>
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<p>1 the scope.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Not to my knowledge.</p> <p>4 MS. ST. PETER-GRIFFITH: Toni, another matter</p> <p>5 that I need to take up with you and I'd like to do</p> <p>6 it on the record and ask you to follow up on it so</p> <p>7 that we can hopefully make a record of it at some</p> <p>8 point today, but I notice that for all of the</p> <p>9 compliance materials that have been produced, they</p> <p>10 were identified as being highly confidential. And,</p> <p>11 you know, consistent with Magistrate Judge Bowler's</p> <p>12 most recent order, it was my understanding that</p> <p>13 Jones Day had previously indicated that it was not</p> <p>14 going to be designating items highly confidential</p> <p>15 unless they fell within the parameters of what</p> <p>16 Judge Saris had previously held was appropriate.</p> <p>17 Can you find out at some point today</p> <p>18 whether or not we can de-designate -- you know, I</p> <p>19 don't know whether it was inadvertent, you know,</p> <p>20 someone just had the stamp or what the situation</p> <p>21 was. But can you identify so we can find out by</p> <p>22 the end of the day and put on the record as to</p>	<p>1 business within HPD.</p> <p>2 Q. Okay.</p> <p>3 A. He advised me that either in '91 or '92,</p> <p>4 he recalled specifically in Arizona giving a fraud</p> <p>5 and abuse presentation to the combined Alternate</p> <p>6 Site/Home Infusion businesses, thought there were</p> <p>7 roughly 40 people there, a large audience. He was</p> <p>8 estimating the numbers in that he did not have a</p> <p>9 copy of that presentation but recalled that it, as</p> <p>10 we discussed, is consistent with the general</p> <p>11 subject matter and format of the multiple</p> <p>12 presentations that have already been produced.</p> <p>13 Q. Sir, can you tell me whether or not --</p> <p>14 You said it was in '91 or '92?</p> <p>15 A. Correct.</p> <p>16 Q. Scrap that question. Did he tell you who</p> <p>17 might have those presentations?</p> <p>18 A. He did not.</p> <p>19 Q. Did he tell you what the substance was in</p> <p>20 more detail?</p> <p>21 A. In more detail, no. It was generally</p> <p>22 fraud and abuse. And, again, it was consistent</p>

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<p style="text-align: right;">Page 379</p> <p>1 with the type of information that is contained in 2 many of the -- or if not most of the presentations 3 that have already been produced. 4 Q. Was there anything -- is there anything 5 unique about fraud and abuse compliance with regard 6 to Home Infusion given their slightly different 7 business model than, say, the rest of Abbott or 8 HPD? 9 A. No, we -- 10 MS. CITERA: Objection to form. 11 BY THE WITNESS: 12 A. We gave fraud and abuse presentations to 13 many of the businesses, including Home Infusion. 14 Q. Okay. But my question is, are there -- 15 given Home Infusion's business model, were there 16 additional fraud and abuse issues that perhaps 17 touched upon them that might not be applicable for, 18 you know, HBS's DRG reimbursement model or even Alt 19 Site's? 20 A. They would be -- 21 MS. CITERA: Objection to form. 22 THE WITNESS: Sorry.</p>	<p style="text-align: right;">Page 381</p> <p>1 Q. In your sort of additional research for 2 today's deposition, nobody told you that Abbott's 3 reimbursement department submitted claims on behalf 4 of Abbott's pharmacies? 5 A. No. 6 Q. Did anyone tell you that Abbott's 7 pharmacies -- well, actually Abbott itself had a 8 provider number with -- or provider numbers with 9 Medicaid and Medicare for purposes of submitting 10 claims on behalf of its pharmacies? 11 MS. CITERA: Objection to the form, outside 12 the scope. 13 BY THE WITNESS: 14 A. I'm not aware of that. 15 Q. Do you think if Abbott -- or is it 16 Abbott's position if it did submit claims to 17 Medicaid and Medicare on its own behalf, that that 18 would create a situation where they would need to 19 have heightened scrutiny on Medicaid and Medicare 20 fraud and abuse? 21 MS. CITERA: Objection to the form, outside 22 the scope.</p>
<p style="text-align: right;">Page 380</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Go ahead. 3 A. They would be -- they would be -- Their 4 business model and activities would be subject to 5 the same compliance regulations and rules and laws 6 that all the other businesses would be subject to. 7 Q. Would the fact that Abbott's Home 8 Infusion business unit actually submitted claims, 9 either on behalf of Abbott's pharmacies or on 10 behalf of customers or consignment partners, would 11 that fact necessitate a need to look at additional 12 compliance measures? 13 MS. CITERA: Objection to the form. 14 BY THE WITNESS: 15 A. As I stated last time, I was not and am 16 not aware that Abbott submitted reimbursement 17 claims in its own name for itself. I'm aware that 18 as part of the services it provided to certain Home 19 Infusion customers, it would have -- it would have 20 done billing. It would have compiled billing 21 information and submitted it on behalf of 22 customers.</p>	<p style="text-align: right;">Page 382</p> <p>1 BY THE WITNESS: 2 A. To the extent they filed claims for -- 3 under its own provider number and in its own name, 4 they would have to comply with the regulations in 5 the -- to the same extent they would comply with 6 regulations as a service provider or product 7 provider. 8 Q. For their consignment partners? 9 A. For their consignment partners or any of 10 their businesses, quite frankly. 11 Q. Okay. Did you discuss anything else with 12 Mr. Taylor? 13 A. I did not. 14 Q. What about Mr. Matea? 15 A. With Mr. Matea, I had a phone 16 conversation that was less than five minutes. And 17 he confirmed my testimony the first -- on last 18 Wednesday. I speculated or assumed that in the 19 composition of the business conduct committee, that 20 Rick Gonzalez, in his capacity as president of 21 Abbott, was, in fact, on the business conduct 22 committee but, in fact, as I suggested in that</p>

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<p style="text-align: right;">Page 383</p> <p>1 testimony, he did not sit on that committee in his 2 capacity or as a president of the committee. It 3 was a -- There was no hierarchy. It was Charlie 4 Brock's committee. So he, Rick Gonzalez, as 5 president, was a member of that committee equally 6 as a president of the division or the internal 7 auditor of the general counsel. 8 Q. Did he tell you about Mr. Gonzalez's 9 participation on that committee? 10 A. He did not. 11 Q. Did you discuss anything else with Mr. 12 Matea? 13 A. That's all I discussed with him. 14 Q. Now, Ms. Tobiason, what did you discuss 15 with her? Well, first, how long did you talk to 16 her? 17 A. To her, less than 5 minutes. 18 Q. Okay. 19 A. Which was this morning in response to a 20 document that, while you saw it at 10:00 o'clock 21 last night, I saw it at 8:00 o'clock this morning. 22 The -- I don't recall the name of it. The Home</p>	<p style="text-align: right;">Page 385</p> <p>1 Q. Okay. Sir, what did you learn from Ms. 2 Tobiason? 3 A. I learned that -- we asked -- talked with 4 her, asked her if she was familiar with this 5 document. She was not. I indicated that it had a 6 date of July 15th, 1999. She indicated that in 7 July of '99, she was no longer with HPD but rather 8 with ADD and that she had no familiarity with this 9 document. 10 Q. Okay. 11 A. We also tried to reach Daju Vicarria who 12 had found the document yesterday. She -- We could 13 not locate her this morning. We will try to reach 14 her during the break. 15 Q. Sounds good. 16 Sir, have you had a chance to look at 17 these documents if you just saw them this morning 18 at 8:00? 19 A. I am familiar with some of these 20 documents generally, yes, some. 21 Q. Okay. We're going to get into them a 22 little bit later. Did you do anything else to</p>
<p style="text-align: right;">Page 384</p> <p>1 Infusion -- 2 Q. Is it this, sir? 3 A. Quite correct. 4 Q. Why don't you pull it out? 5 A. Which pile is it in? 6 MS. CITERA: Exhibit 10. 7 MS. ST. PETER-GRIFFITH: That, yeah, No. 10. 8 Or No. 9. 9 MS. CITERA: It's the last document. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. If you could just read the Bates range at 12 the bottom, sir, so we have a record of what 13 document you're referring. See where it says 14 ABT-DOJ? 15 A. Oh, 0398240 through 0398249. 16 Q. Okay. 17 A. It's titled, "Abbott Laboratories, Inc.," 18 it shouldn't have a comma there, "Home Infusions 19 Services, Reimbursement Operations, Compliance 20 Program." 21 Q. Curiously, should there not be a comma? 22 A. There should not be a comma.</p>	<p style="text-align: right;">Page 386</p> <p>1 prepare for today's deposition? 2 A. I did. I reviewed the full deposition 3 transcript of the depositions that I had indicated 4 previously that I had seen excerpts from. 5 Q. So you read the entire transcripts? 6 A. I reviewed them. I actually -- I was not 7 -- like you, was not aware that the deposition 8 would be going forward today. So between late 9 Tuesday and this morning, I reviewed as many -- as 10 much of the testimony as I could. I did not get to 11 Don Robertson's testimony or Ginnie Tobiason. 12 Q. Okay. Are those the only two that you 13 didn't get to? 14 A. My recollection, yes, of the ones I had 15 seen excerpts from, yes. 16 Q. Okay. Did you review any other 17 deposition transcripts? 18 A. I did not. 19 Q. How about your own from Day 1? 20 A. Oh, I did. I reviewed that quickly as 21 well. 22 Q. Probably not as quickly as I did, sir.</p>

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<p>1 Sir, when we last were here, we ended 2 with a series of questions concerning some 3 documents that I showed you which had spread 4 information. You indicated that you hadn't -- that 5 you weren't -- were not aware of the existence of 6 those documents? 7 A. Correct. 8 Q. Have you done anything to follow up and 9 learn more about whether or not Abbott HPD or 10 employees therein provided AWP or spread 11 information to Abbott customers? 12 A. I did not. 13 MS. CITERA: Objection, outside the scope. 14 BY THE WITNESS: 15 A. I did not. 16 MS. ST. PETER-GRIFFITH: Toni, I'll just have 17 -- I mean, I know you want to make the record of 18 outside the scope. 19 MS. CITERA: I know you disagree. 20 MS. ST. PETER-GRIFFITH: I disagree. So we'll 21 just agree to disagree. 22 MS. CITERA: We can agree to disagree. I was</p>	<p>1 sodium chloride, acyclovir, Vancomycin, sterile 2 water, and dextrose -- Abbott knew, did it not, 3 that it was reporting list prices to the price 4 reporting compendia for those particular drug 5 products that most of the time or almost nearly all 6 the time from the '91 through 2001 time period 7 exceeded the actual contract prices by a hundred 8 percent or more? 9 MS. CITERA: Objection to the form. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Correct? 12 MS. CITERA: Outside the scope. 13 BY THE WITNESS: 14 A. I don't know that -- the detail with 15 which you phrased the question, I can say I don't 16 know. 17 Q. Okay. 18 MS. CITERA: Just for the record, I don't 19 think we did give him a list of the drugs. 20 MS. ST. PETER-GRIFFITH: They were in the 21 first amended complaint. 22 MS. CITERA: I don't think we marked the first</p>
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<p>1 actually going to suggest that the last time, I 2 guess, since you don't agree with me. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Sir, as a matter of policy, why didn't 5 Abbott lower its list prices reported to the 6 pricing compendia? 7 MS. CITERA: Objection, outside the scope. 8 MS. ST. PETER-GRIFFITH: Hold up. That one, I 9 will tell you, I asked that question of Mr. Sellers 10 and they told me to ask it of Mr. Fishman. So 11 that's why we're asking this series of questions 12 that were raised at the Sellers' deposition. I was 13 told Mr. Fishman is here to discuss the policy, the 14 policies. 15 BY THE WITNESS: 16 A. Okay. Could you repeat the question, 17 please? 18 Q. Sure. Why, as a matter of policy -- 19 Well, first, let me ask you, Abbott was aware, was 20 it not, that it had on the products that are at 21 issue in this lawsuit, the subject drugs, which we 22 saw the list at the last deposition, right --</p>	<p>1 amended complaint. 2 MS. ST. PETER-GRIFFITH: You know what? Maybe 3 we didn't. I'm sorry. 4 MS. CITERA: We've been at a lot of 5 depositions. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Let me, sir, I mean, I can write up a 8 list of the subject drugs we're talking about 9 whenever I say "subject drugs." I was going to 10 say, I did have a copy of the amended complaint. 11 But I gave it to Chris Cook to use at his 12 deposition. 13 MS. CITERA: I'm just going to object that 14 acyclovir is a subject drug. As I understand it, 15 the judge didn't allow it to relate back and -- 16 MS. ST. PETER-GRIFFITH: It's still the 17 subject of this case. She's ruled that you folks 18 need to produce discovery on it, so ... 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Mr. Fishman, when I refer to the subject 21 drugs, those are the drugs that are at issue in the 22 federal lawsuit, okay?</p>

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<p>1 A. Okay. I understand that now.</p> <p>2 Q. And, you know, I'll represent to you as</p> <p>3 pled in the complaint that from '91 through 2001,</p> <p>4 Abbott reported list prices -- and we went over</p> <p>5 this, in part, at the Sellers' deposition -- Abbott</p> <p>6 reported list prices to the price reporting</p> <p>7 compendia for these products that were 50, 75, a</p> <p>8 hundred percent to a thousand percent in excess of</p> <p>9 the contract prices that it was charging its</p> <p>10 customers, okay?</p> <p>11 MS. CITERA: Objection to the form.</p> <p>12 MS. ST. PETER-GRIFFITH: That's the predicate</p> <p>13 for the following series of questions, okay?</p> <p>14 MS. CITERA: Okay.</p> <p>15 MS. ST. PETER-GRIFFITH: And, Toni, I'll</p> <p>16 represent to you that, you know, Mike Sellers, we</p> <p>17 went through a whole series of documents and he</p> <p>18 represented that they're accurate and that's what</p> <p>19 those documents reflect, okay.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Why as a matter of policy did Abbott not,</p> <p>22 from the '91 through 2001 time period, why as a</p>	<p>1 placed upon Abbott's price reporting activities to</p> <p>2 the compendia to ensure compliance with state and</p> <p>3 federal Medicaid and Medicare fraud and abuse</p> <p>4 statutes?</p> <p>5 MS. CITERA: Object to the form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. What do you mean by -- "checks and</p> <p>8 balances" is kind of a broad, vague term. What do</p> <p>9 you mean by "checks and balances"?</p> <p>10 Q. Well, were there any policies governing</p> <p>11 the -- how Abbott went about reporting its prices</p> <p>12 to the price reporting compendia to ensure that</p> <p>13 when it did, it was in compliance with federal and</p> <p>14 state Medicaid and Medicare fraud and abuse</p> <p>15 statutes?</p> <p>16 MS. CITERA: Object to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. As a -- as a general position of policy</p> <p>19 and compliance, Abbott had as a policy, a stated</p> <p>20 policy within its code of business conduct, to</p> <p>21 comply with all laws and regulations and statutes,</p> <p>22 which would have included and did include the</p>
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<p>1 matter of policy did Abbott not lower its list</p> <p>2 prices reporting to the pricing compendia for the</p> <p>3 subject drugs?</p> <p>4 MS. CITERA: Object to the form, outside the</p> <p>5 scope.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I do not know that Abbott's actions with</p> <p>8 respect to providing list price information to the</p> <p>9 compendia, regardless of what the percentage</p> <p>10 increase may have been over a contract price -- and</p> <p>11 there probably were multiple contract prices would</p> <p>12 be my expectation -- that it was done as a matter</p> <p>13 of policy.</p> <p>14 Q. Okay. Are you prepared, sir, to testify</p> <p>15 today or did you prepare to testify today about</p> <p>16 Abbott's -- the policies concerning Abbott's</p> <p>17 creation or setting of list prices or the reporting</p> <p>18 of list prices to the pricing compendia?</p> <p>19 A. To my knowledge, Abbott did not have a</p> <p>20 policy pertaining to reporting price information to</p> <p>21 the compendia.</p> <p>22 Q. Well, were there any checks and balances</p>	<p>1 Medicare and Medicaid fraud and abuse, False Claims</p> <p>2 Act, and other Medicare-related compliance</p> <p>3 statutes.</p> <p>4 So as a policy, they would have complied</p> <p>5 with that. They would have been expected -- they,</p> <p>6 Abbott, its employees would have been expected to</p> <p>7 comply with those statutes and regulations.</p> <p>8 Q. What did Abbott's employees do to ensure</p> <p>9 that their price reporting to the pricing compendia</p> <p>10 or their price reporting to the state Medicaid</p> <p>11 agencies complied with those statutes?</p> <p>12 MS. CITERA: Object to the form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Excuse me. With respect to the price</p> <p>15 compendia, to the extent the statute identified and</p> <p>16 defined what the standards for providing such</p> <p>17 information was, they would have complied with it.</p> <p>18 We talked about ensuring compliance in some detail</p> <p>19 in my last deposition. And my answer, I can repeat</p> <p>20 my answer. But my answer is effectively the same as</p> <p>21 what I gave last time.</p> <p>22 Q. Okay. And, sir, we're going to go over</p>

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<p>1 various, you know, different policies. So to the 2 extent that it is the same as to what you testified 3 before, just let me know that. Okay? 4 A. Okay. 5 Q. Fair enough? 6 A. Certainly. 7 Q. Did Abbott have a particular procedure to 8 ensure that when reporting its prices to the 9 pricing compendia, it was in compliance with 10 federal and state Medicare and Medicaid fraud and 11 abuse statutes? 12 MS. CITERA: Objection to form. 13 BY THE WITNESS: 14 A. I am not aware of any procedure, written 15 procedure. 16 Q. How about just like you had testified 17 earlier, there was a practice about not providing 18 AWP information, right? 19 A. To customers. 20 Q. To customers, okay. Was there -- Even 21 though there wasn't a written policy, was there a 22 practice with regard -- at Abbott with regard to</p>	<p>1 A. I believe -- 2 Q. Let me clarify. 3 A. Okay. 4 Q. Is it -- Was it -- Did you read his 5 transcript from Sunday's deposition? 6 A. No, I did not. 7 Q. Okay. So it was from a prior deposition? 8 A. It was from a prior deposition. I 9 understand it was the deposition he was a 30(b)(6) 10 witness. 11 MS. CITERA: Texas. 12 MS. ST. PETER-GRIFFITH: It's Texas? Okay. 13 BY THE WITNESS: 14 A. I don't remember the date. 15 MS. CITERA: It was February '07. 16 MS. ST. PETER-GRIFFITH: February of last 17 year. 18 BY THE WITNESS: 19 A. Okay. 20 Q. How did Abbott know that its employees 21 who reported prices complied with federal and state 22 Medicare and Medicaid fraud and abuse statutes?</p>
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<p>1 its price reporting to the price compendia that 2 Abbott, you know, expected its employees to follow 3 to ensure that when they reported prices, they were 4 in compliance? 5 MS. CITERA: Objection to the form. 6 BY THE WITNESS: 7 A. Compliance with what? 8 Q. Federal and state Medicare and Medicaid 9 fraud and abuse statutes and regulations. 10 A. Okay. Again, to the extent those -- that 11 that body of law defined what the -- our 12 requirements were for reporting, they would have 13 been in compliance. In terms of a practice, I 14 learned through reading Mike Sellers' deposition 15 testimony that the expectation of the compendia, 16 compendium or compendia, was that we provide -- the 17 information they sought was list price. 18 Q. But you know that only from reading Mike 19 Sellers' deposition transcript? 20 A. That's correct. 21 Q. And just to be clear, which transcript 22 are we talking about? Let me --</p>	<p>1 MS. CITERA: Objection to form. 2 BY THE WITNESS: 3 A. I would give the same answer regarding 4 compliance, a broad answer I gave regarding how 5 Abbott provided, you know, training information to 6 employees through the legal department and that as 7 a very large, multiple-thousand-person operation 8 and business, it relied on its managers to 9 supervise its direct reports. 10 Q. Now, you testified last time that Abbott 11 did not undertake any initiative to contact federal 12 officials or state officials concerning its 13 compliance with Medicare and Medicaid fraud and 14 abuse statutes; is that right? 15 MS. CITERA: Objection to the form. 16 BY THE WITNESS: 17 A. I said to my knowledge, they did not. 18 Q. Okay. Did you do anything to research 19 between your deposition and this deposition whether 20 Abbott did? 21 A. I did not. 22 Q. Did Abbott do anything to verify with any</p>

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<p>1 state or federal Medicaid or Medicare official 2 whether or not its practices regarding list prices 3 were in compliance with federal and state Medicare 4 and Medicare fraud and abuse statutes? 5 A. Not to my knowledge. 6 MS. CITERA: Objection to form. 7 THE WITNESS: Sorry. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. When you say "not to my knowledge," 10 you're speaking on behalf of Abbott, right? 11 A. I have no -- I have no personal knowledge 12 as well as in talking with the people that I spoke 13 with in preparation of the deposition, did not 14 learn that information. 15 Q. Can you, as you sit here today, tell us 16 whether or not Abbott undertook any initiative to 17 contact a state or federal official to ensure that 18 their price reporting practices were in compliance 19 with federal and state Medicare and Medicaid fraud 20 and abuse statutes? 21 MS. CITERA: Objection to form. 22 BY THE WITNESS:</p>	<p>1 Q. Who would know whether or not there was 2 such a policy? 3 MS. CITERA: Objection to the form. 4 BY THE WITNESS: 5 A. Are we talking corporate or HPD? 6 Q. Frankly, sir, you could tell me. Either, 7 anyone within Abbott? 8 A. Between 1991 and 2000? 9 Q. And '1? 10 A. 2001. In 2000, the creation of the 11 Office of Ethics and Compliance, Charlie Brock, 12 would have been a central point person for 13 corporate compliance. So that would be one person. 14 In terms of the actual pricing decision, each 15 division -- I'm speculating. But I believe, 16 knowing how the divisions were operating, the 17 division set pricing -- you know, ran somewhat 18 autonomously in its business operations and would 19 have set pricing within its organization. And who 20 within the organizations were involved in the 21 pricing, I do not know. In '91 through 2001 it 22 probably would have been a very long list of people</p>
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<p>1 A. I cannot. 2 Q. As a matter of policy, did Abbott do 3 anything to reduce its spread between the contract 4 prices and list prices for the subject drugs? 5 MS. CITERA: Objection to the form. 6 BY THE WITNESS: 7 A. In what time? 8 MS. CITERA: Outside the scope. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. '91 through 2000. 11 A. '91 to 2000? 12 Q. I'm sorry, to 2001. 13 A. I don't know that they did as a matter of 14 policy. Whether it happened, I don't have -- did 15 not review records to be able to state 16 categorically that it did not happen. I'm not 17 aware of any policy to not do that. 18 Q. Are you aware of a policy to do that? 19 A. No. 20 Q. So you're just not aware of any policy? 21 A. I'm not aware of a policy with respect to 22 that.</p>	<p>1 given the changing responsibilities within 2 organizations. 3 Q. Was there anyone tasked with the 4 responsibility of ensuring that in reporting its 5 prices Abbott was in -- for this time period, '91 6 through 2000, let's say, pre-OEC, was anyone 7 responsible for ensuring that in its price 8 reporting activities, Abbott was in compliance with 9 federal and state Medicare and Medicaid fraud and 10 abuse statutes? 11 MS. CITERA: Objection to the form. 12 BY THE WITNESS: 13 A. The people who were -- had within their 14 job -- job description responsibilities government 15 contracting, government pricing would have been 16 tasked with that responsibility. 17 Q. Okay. Do you know how or does Abbott 18 know how they went about implementing overseeing 19 that responsibility or -- well, overseeing 20 compliance or ensuring compliance? 21 MS. CITERA: Objection to the form. 22 BY THE WITNESS:</p>

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<p style="text-align: right;">Page 403</p> <p>1 A. I think my same answer would -- back from 2 before, that people who were direct reports of 3 managers, managers would be responsible for -- for 4 seeing that their direct reports complied with all 5 laws and all policies and all standards of 6 behavior. 7 Q. How -- How would -- Did Abbott give them 8 the tools to understand how to do that with regard 9 to price reporting? 10 MS. CITERA: Objection to the form, outside 11 the scope. 12 BY THE WITNESS: 13 A. I believe that Abbott had, through 14 practice and through involvement in the industry, 15 gained that knowledge. And in reading through 16 testimony, people participated in trade 17 associations. And there was, again, general 18 industry information and practice of adhering to 19 that, plus, again to the extent there was specific 20 instructions on how to prepare certain pricing, 21 they would have followed the specific instructions. 22 Q. From who?</p>	<p style="text-align: right;">Page 405</p> <p>1 make a determination on a case-by-case basis as to 2 what to do. 3 Q. To Abbott's knowledge, did that ever 4 happen? 5 MS. CITERA: Objection to form. 6 BY THE WITNESS: 7 A. Not to my knowledge. 8 Q. But what about to Abbott's knowledge? 9 You're here to testify as Abbott today. 10 A. In reviewing -- in becoming -- gaining 11 Abbott's knowledge through the course of the 12 materials I reviewed and the people that I 13 discussed, I am not -- I, Abbott, am not aware of 14 that. 15 Q. Were you ever made aware that there was 16 -- that the State of Texas provided specific 17 instructions concerning price reporting and that 18 Abbott did not follow those instructions? 19 MS. CITERA: Objection to the form. 20 BY THE WITNESS: 21 A. I was not made aware of that. 22 Q. Sir, Abbott -- you testified at some</p>
<p style="text-align: right;">Page 404</p> <p>1 A. From the regulations. 2 Q. What about from states? If states 3 provided -- Like, if the State of Texas, for 4 example, provided an instruction on what it 5 expected for its price reporting, would Abbott 6 expect that its employees would follow those 7 directions from that state Medicaid program? 8 A. Yes. 9 MS. CITERA: Objection to form. 10 THE WITNESS: Sorry. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. What would happen if the employees did 13 not? 14 MS. CITERA: Objection to form, outside the 15 scope. 16 BY THE WITNESS: 17 A. Hypothetically, if they did not and the 18 organization became aware of it, they would 19 investigate the reasons behind -- assuming they did 20 not and assuming that it was a failure to comply, 21 the organization would evaluate, look into the 22 circumstances as to why they failed to comply and</p>	<p style="text-align: right;">Page 406</p> <p>1 length last time we were here about Abbott's 2 practice concerning not providing AWP or spread 3 information to customers. 4 A. Yes. 5 Q. In light of the -- What's the reason 6 behind that policy or practice? I'm sorry. 7 MS. CITERA: Objection to the form. 8 BY THE WITNESS: 9 A. I don't have a specific -- I'm not aware 10 of a specific articulated reason. From reviewing 11 the materials and understanding how Abbott conducts 12 business, Abbott's focus has always been on, and 13 especially within HPD, the breadth of its portfolio 14 and on the efficacy and quality of its products. 15 It was a business -- it was a way in which Abbott 16 conducted business. 17 Q. By maintaining this practice, which was 18 not formalized until much later, we established 19 last time, was Abbott trying to prevent its 20 employees from doing something that contravened 21 federal and state Medicare and Medicaid fraud and 22 abuse statutes?</p>

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<p style="text-align: right;">Page 407</p> <p>1 MS. CITERA: Objection to the form, outside 2 the scope. 3 BY THE WITNESS: 4 A. Not to my knowledge. 5 Q. Why have it? Why have this practice, 6 then? 7 MS. CITERA: Objection to the form. 8 BY THE WITNESS: 9 A. As I understand, it was not the way in 10 which Abbott chose to conduct its business. 11 Q. How come? 12 MS. CITERA: Objection to the form. 13 BY THE WITNESS: 14 A. The focus was on quality of the product, 15 the service it provided its customers, the breadth 16 of -- especially in HPD, the breadth of its 17 portfolio across all the different product lines. 18 Q. So in having this practice, or 19 maintaining this practice that you testified to 20 from '91 -- from least '91 until 2001, Abbott was 21 not trying to undertake steps or preventive 22 measures to ensure that its employees, its sales</p>	<p style="text-align: right;">Page 409</p> <p>1 MS. CITERA: Same objections. 2 BY THE WITNESS: 3 A. Specifically, no. But in the broadest 4 sense, every -- all practices -- any policy, even 5 policies and rules that you adhere to would be to 6 maintain compliance. So it would have to have been 7 a factor. I mean, it's a factor in all activities 8 that you undertake. If you're seeking to comply 9 with laws, then everything you do is in furtherance 10 of that goal. 11 Q. Okay. Well, if Abbott maintained the 12 practice in part during this time period, in part 13 to comply with federal and state Medicare Medicaid 14 fraud and abuse statutes, is that fair? 15 MS. CITERA: Objection. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. That it did it at least in part? 18 MS. CITERA: Objection to form, outside of the 19 scope. 20 BY THE WITNESS: 21 A. As I said, all activities would have been 22 to be in compliance with laws.</p>
<p style="text-align: right;">Page 408</p> <p>1 employees were in compliance with federal and state 2 Medicare and Medicaid fraud and abuse statutes? 3 MS. CITERA: Objection to the form, outside 4 the scope. 5 BY THE WITNESS: 6 A. Could you repeat it? There was some 7 double negatives in there. 8 Q. Sure. 9 MS. ST. PETER-GRIFFITH: Can you read that 10 back? And if I listen to it, I might try and 11 clarify it myself. 12 (Record read as requested.) 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Let me try and clarify it, okay. For 15 this time period, that Abbott maintained the 16 practice, okay, pre-policy -- How does that sound? 17 A. I understand. 18 Q. For the time period that Abbott 19 maintained the practice, was it doing so to prevent 20 its employees from violating federal or state 21 Medicare and Medicaid fraud and abuse compliance 22 regulations and statutes?</p>	<p style="text-align: right;">Page 410</p> <p>1 Q. Okay. If that's the case, sir, why did 2 Abbott permit for the subject drugs, the 3 maintenance of spreads between its list price and 4 its contract price of 50 percent, 75 percent, a 5 hundred percent, up to a thousand percent or more 6 on the subject drugs? 7 MS. CITERA: Objection to form, outside the 8 scope. 9 BY THE WITNESS: 10 A. I can't testify as to why they did it. 11 But it assumes that the -- again, to the extent the 12 statute defined -- provided guidance as to what 13 activities were proscribed by statute, Abbott would 14 have -- Abbott would expect -- Abbott would and 15 would expect its employees to adhere to that. 16 Q. Well, if there's something wrong with 17 Abbott's sales staff or its employees, if there's 18 something wrong with them providing AWP or spread 19 information to customers, is there something wrong 20 with Abbott maintaining high spreads on the subject 21 drugs? 22 MS. CITERA: Objection to the form, outside</p>

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<p style="text-align: right;">Page 411</p> <p>1 the scope.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. And when I say "high spreads," I mean a</p> <p>4 spread that's 50 percent up to a thousand percent.</p> <p>5 A. I understand.</p> <p>6 MS. CITERA: Same objections.</p> <p>7 BY THE WITNESS:</p> <p>8 A. First, I didn't say it was wrong. I said</p> <p>9 it was practice not to do that. You're placing a</p> <p>10 value judgment to that decision.</p> <p>11 Q. Then let me -- Before you answer this</p> <p>12 question, let me go back.</p> <p>13 Did Abbott as a matter of policy believe</p> <p>14 that it was wrong for employees to provide AWP or</p> <p>15 spread information to its customers?</p> <p>16 MS. CITERA: Objection to the form, outside</p> <p>17 the scope.</p> <p>18 BY THE WITNESS:</p> <p>19 A. As a matter of policy, it did not have a</p> <p>20 policy with respect to that. Its practice was not</p> <p>21 to do it.</p> <p>22 Q. But in maintaining that practice -- or</p>	<p style="text-align: right;">Page 413</p> <p>1 BY THE WITNESS:</p> <p>2 A. It -- It chose not to emphasize that</p> <p>3 information and elected to emphasize other</p> <p>4 information.</p> <p>5 Q. But would it have been wrong during this</p> <p>6 '91 through 2001 policy for Abbott's customers or</p> <p>7 Abbott's sales employees or any employee to provide</p> <p>8 spread or AWP information to customers?</p> <p>9 MS. CITERA: Objection to the form.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Was that wrong?</p> <p>12 MS. CITERA: Outside the scope.</p> <p>13 BY THE WITNESS:</p> <p>14 A. "Wrong" is -- I don't know how to address</p> <p>15 "wrong."</p> <p>16 Q. Well, did Abbott perceive that there was</p> <p>17 something incorrect or inappropriate about</p> <p>18 providing that information?</p> <p>19 MS. CITERA: Objection to the form, outside</p> <p>20 the scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Abbott elected -- It's not a zero sum --</p>
<p style="text-align: right;">Page 412</p> <p>1 did Abbott maintain that practice because it</p> <p>2 somehow believed that the provision of AWP or</p> <p>3 spread information to customers was wrong?</p> <p>4 MS. CITERA: Objection to the form, outside</p> <p>5 the scope.</p> <p>6 BY THE WITNESS:</p> <p>7 A. As I stated before, the reason why Abbott</p> <p>8 did that is its business practice was to emphasize</p> <p>9 other aspects of Abbott's business and product</p> <p>10 portfolio and company capabilities, and the</p> <p>11 emphasis with respect to customers was</p> <p>12 product-focused.</p> <p>13 Q. But as a matter of policy, does Abbott</p> <p>14 believe for the '91 through 2000, the pre-written</p> <p>15 policy time frame, did Abbott believe that the</p> <p>16 provision of AWP or spread information was wrong?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope.</p> <p>19 BY THE WITNESS:</p> <p>20 A. As I stated before, there was no policy.</p> <p>21 Q. Okay. As a matter of practice, then?</p> <p>22 MS. CITERA: Same objections.</p>	<p style="text-align: right;">Page 414</p> <p>1 It's not one or the other. Abbott elected to</p> <p>2 pursue its business practice for reasons that did</p> <p>3 not involve AWP, providing AWP information. It had</p> <p>4 to do with emphasizing the services that Abbott</p> <p>5 could provide, the quality of the product, the</p> <p>6 breadth of the portfolio, and the overall business</p> <p>7 relationship that Abbott maintained with its</p> <p>8 customers.</p> <p>9 Q. Sir, do you -- When we were last here, I</p> <p>10 showed you some exhibits where Abbott provided AWP</p> <p>11 or spread information to customers.</p> <p>12 A. Yes.</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. From Abbott's view, as a matter of</p> <p>16 practice or as a matter of policy, prior to the</p> <p>17 implementation of the written policy, was there</p> <p>18 something wrong with Abbott's employees providing</p> <p>19 that information?</p> <p>20 MS. CITERA: Objection to the form, outside</p> <p>21 the scope.</p> <p>22 BY THE WITNESS:</p>

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<p style="text-align: right;">Page 415</p> <p>1 A. As I stated in my deposition testimony</p> <p>2 last week with respect to the series of documents</p> <p>3 that you showed me that reflected information</p> <p>4 regarding AWP and/or spread, I stand by my</p> <p>5 testimony that that was not consistent with the</p> <p>6 practice that Abbott maintained.</p> <p>7 Q. I understand it's not consistent with the</p> <p>8 practice. But was it wrong?</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I -- I believe asking whether it was</p> <p>13 wrong is an opinion.</p> <p>14 Q. No. I want to know whether Abbott</p> <p>15 believed it was wrong. I'm not asking for your</p> <p>16 opinion. I'm asking for Abbott's position as to</p> <p>17 whether or not that was wrongful conduct.</p> <p>18 MS. CITERA: You're asking for the company's</p> <p>19 opinion, and the witness is not here to testify as</p> <p>20 to opinions. He's here to testify as to facts.</p> <p>21 Objection to form, outside the scope.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 417</p> <p>1 A. Who would know?</p> <p>2 MS. CITERA: Object to the form, outside the</p> <p>3 scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Time frame '91 to 2001 again?</p> <p>6 Q. Uh-huh, pre-written policy.</p> <p>7 A. Pre-written policy.</p> <p>8 Q. We'll get to the written policy shortly.</p> <p>9 A. I would think the people who were</p> <p>10 directly involved in pricing and reimbursement</p> <p>11 information and decisions within the divisions</p> <p>12 would be the ones who, to the extent there was a</p> <p>13 value judgment placed on doing it or not doing it,</p> <p>14 other than what I've stated, which is there was not</p> <p>15 a business objective in doing it, they would be the</p> <p>16 ones who could answer that.</p> <p>17 Q. Let's go to the -- switch from when the</p> <p>18 practice became a policy.</p> <p>19 A. Okay.</p> <p>20 Q. Did Abbott implement its written policy,</p> <p>21 its formalized policy, against providing spread or</p> <p>22 AWP information because it believed that the</p>
<p style="text-align: right;">Page 416</p> <p>1 Q. Sir, you can answer the question.</p> <p>2 A. I reiterate my previous statement that it</p> <p>3 was inconsistent. Asking me whether it was wrong,</p> <p>4 the word "wrong" has many, many connotations; and I</p> <p>5 think you're requesting an opinion.</p> <p>6 Q. Well, did Abbott think that there was --</p> <p>7 that the provision of the information was</p> <p>8 acceptable?</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope.</p> <p>11 BY THE WITNESS:</p> <p>12 A. They elected not to -- as a practice,</p> <p>13 elected not to do it.</p> <p>14 Q. In electing that practice, did the</p> <p>15 consideration of whether or not the provision of</p> <p>16 that AWP or spread information to customers was</p> <p>17 right or wrong enter into the equation?</p> <p>18 MS. CITERA: Objection to the form, outside</p> <p>19 the scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know.</p> <p>22 Q. Who would know?</p>	<p style="text-align: right;">Page 418</p> <p>1 practice was wrong?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. In 2003, by the time policies came into</p> <p>6 being in the 2003/2004 time frame, I believe that</p> <p>7 there was sufficient public information and</p> <p>8 sufficient guidance from the government as to how</p> <p>9 it viewed these practices that influenced the</p> <p>10 decision.</p> <p>11 Q. Okay. What do you mean by that? Are you</p> <p>12 saying that because it was more clear to Abbott</p> <p>13 that the United States did not condone this</p> <p>14 practice, that Abbott as of the time that it</p> <p>15 adopted the written policy believed that the</p> <p>16 provision of AWP or spread information to customers</p> <p>17 was wrong?</p> <p>18 MS. CITERA: Object to the form, outside the</p> <p>19 scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Because there was more information with</p> <p>22 which to evaluate at that time, Abbott would</p>

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<p style="text-align: right;">Page 419</p> <p>1 clearly have taken those opinions and information 2 that was available into consideration into 3 identifying which policies to implement. 4 Q. Okay. But did it believe it was the -- 5 the practice was wrong? 6 MS. CITERA: Object to the form, outside the 7 scope. 8 BY THE WITNESS: 9 A. It elected -- in -- with the creation and 10 passage and issuance of the policy, it elected to 11 formally state that Abbott would not conduct -- 12 would not conduct its business in that way. 13 Q. Is that because Abbott believed it was 14 wrong? 15 MS. CITERA: Same objections. 16 BY THE WITNESS: 17 A. Same answer to the statement about wrong, 18 right or wrong. 19 Q. Sir, I understand that you want to give 20 your, you know, or Abbott's position on this. And 21 counsel for Abbott is free to elicit this testimony 22 from you at a later point in time.</p>	<p style="text-align: right;">Page 421</p> <p>1 MS. ST. PETER-GRIFFITH: I am entitled to an 2 answer to this question. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Did Abbott believe the practice was right 5 or wrong at the time that it implemented the 6 written policy? 7 MS. CITERA: Same objections, object to the 8 form, outside the scope. 9 BY THE WITNESS: 10 A. Same answer as I provided before, which 11 is Abbott believed that formalizing this policy 12 reflected the way in which it elected to do 13 business. 14 Q. Can you answer the question yes or no? 15 A. I believe -- 16 MS. CITERA: Objection to the form, outside 17 the scope. 18 BY THE WITNESS: 19 A. I believe that asking for an opinion as 20 to right or wrong is not -- is not -- I'm not 21 prepared to testify to that today. 22 Q. Sir, I'm not here to ask your opinion as</p>
<p style="text-align: right;">Page 420</p> <p>1 My question just calls for a simple yes 2 or no. At the time that Abbott implemented its 3 written policy concerning the provision of AWP or 4 spread information to customers, did Abbott believe 5 that such a practice was wrong? 6 MS. CITERA: I'm just going to object. He's 7 not here to testify as to what's right or wrong. 8 He doesn't have to answer yes or no to that 9 question because it's not an appropriate subject 10 for this deposition. 11 MS. ST. PETER-GRIFFITH: Unless you're 12 instructing him not to answer -- 13 MS. CITERA: It requires a legal conclusion as 14 to right and wrong, and who's to say what's right 15 and wrong? He doesn't have to answer that 16 question. He's tried to answer it. He's not going 17 to answer whether something is right or wrong. 18 He's not here -- 19 MS. ST. PETER-GRIFFITH: Toni, first, I don't 20 appreciate the speaking objections. 21 MS. CITERA: Well, you give a speaking 22 instruction.</p>	<p style="text-align: right;">Page 422</p> <p>1 to whether it's right or wrong. I'm -- What my 2 question is, and let me make it clear, when Abbott 3 implemented the policy, the written policy as 4 opposed to when it had the practice before to 5 prohibit its employees from providing AWP or spread 6 information to customers, did Abbott implement that 7 policy because it believed that the practice of 8 providing such information to customers was wrong? 9 MS. CITERA: Same objections. 10 BY THE WITNESS: 11 A. I don't know. 12 Q. Sir, didn't Abbott, in fact, prior to 13 2003 have an understanding or did Abbott have an 14 understanding as to whether or not the maintenance 15 of high spreads -- I'm sorry. Strike that 16 question. 17 Let me ask you, did Abbott see anything 18 wrong -- Strike that too. 19 Did Abbott view the maintenance of high 20 spreads on the subject drugs -- and when I say 21 "high," I mean 50 percent or more -- as being 22 violative of any federal or state Medicaid or</p>

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<p>1 Medicare fraud and abuse statute or regulation?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. As I understand reading deposition</p> <p>6 testimony and talking with people, that Abbott did</p> <p>7 not create spread.</p> <p>8 Q. How -- Why do you say that?</p> <p>9 A. My understanding is that Abbott would</p> <p>10 have provided pricing information to the compendia,</p> <p>11 and the compendia then ultimately issued -- issued</p> <p>12 the pricing information. To the extent the spread</p> <p>13 would have been created, that would have created</p> <p>14 the spread.</p> <p>15 Q. But Abbott understood that there was a</p> <p>16 correlation between the provision of its list price</p> <p>17 information to the price reporting compendia and</p> <p>18 the calculation of AWP, correct?</p> <p>19 MS. CITERA: Objection, form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. In reading deposition testimony, it</p>	<p>1 BY THE WITNESS:</p> <p>2 A. To the extent there was one, it would be</p> <p>3 privileged.</p> <p>4 Q. My question, sir -- You can answer</p> <p>5 whether or not there was one prepared at a minimum</p> <p>6 and listen to the instruction as to the content.</p> <p>7 My question right now is, was there one prepared?</p> <p>8 MS. CITERA: I don't think he has to answer</p> <p>9 that because I think that is privileged in and of</p> <p>10 itself.</p> <p>11 MS. ST. PETER-GRIFFITH: No, it's not</p> <p>12 privileged in and of itself. The existence of a</p> <p>13 document -- I mean, you folks haven't, I don't</p> <p>14 think, given us a complete privilege log yet. I</p> <p>15 want to know whether or not there was such an</p> <p>16 analysis done or document created. That I'm</p> <p>17 entitled to find out, Toni.</p> <p>18 MS. CITERA: Anything that would have been</p> <p>19 done would have been subject to the privilege,</p> <p>20 would have been subject to the work product. By</p> <p>21 the time we're speaking about, Abbott was obviously</p> <p>22 being investigated and/or sued. That all would</p>
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<p>1 appears that there were people within Abbott who</p> <p>2 understood what the compendia did with list price</p> <p>3 information; so understood the relationship.</p> <p>4 "Relationship" is a very broad term. In all</p> <p>5 aspects of a relationship, I can't answer that.</p> <p>6 Generally did they understand that that list</p> <p>7 information was involved in creating AWP?</p> <p>8 Deposition testimony suggests that there were</p> <p>9 people within Abbott who understood that.</p> <p>10 Q. Did anyone within Abbott evaluate whether</p> <p>11 or not the maintenance of high spreads or high</p> <p>12 differentials between contract price and reported</p> <p>13 list price implicated Medicare and Medicaid fraud</p> <p>14 and abuse statutes?</p> <p>15 MS. CITERA: Objection to the form, outside</p> <p>16 the scope. I'm going to also caution you not to</p> <p>17 reveal any legal information.</p> <p>18 BY THE WITNESS:</p> <p>19 A. To the extent there was a legal analysis</p> <p>20 prepared, that would be privileged.</p> <p>21 Q. Was there a legal analysis prepared?</p> <p>22 MS. CITERA: Same objections and instructions.</p>	<p>1 have been privileged.</p> <p>2 MS. ST. PETER-GRIFFITH: Let me be clear. I'm</p> <p>3 not just talking about for the 2003 time period.</p> <p>4 I'm talking about any time from '91 to 2003.</p> <p>5 MS. CITERA: And --</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Was any analysis done?</p> <p>8 A. To my --</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope. Same caution to you.</p> <p>11 BY THE WITNESS:</p> <p>12 A. To my knowledge, both personal knowledge</p> <p>13 and speaking on behalf of Abbott, any questions</p> <p>14 with respect to AWP would have been handled through</p> <p>15 our litigation department.</p> <p>16 Q. Okay. Well, did your litigation</p> <p>17 department do an analysis?</p> <p>18 MS. CITERA: Same objections, same</p> <p>19 instruction.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know.</p> <p>22 Q. Who would know?</p>

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<p style="text-align: right;">Page 427</p> <p>1 MS. CITERA: Same objections. 2 BY THE WITNESS: 3 A. People within the litigation department. 4 Q. Anyone in particular? 5 MS. CITERA: Same objections. 6 BY THE WITNESS: 7 A. Time frames? 8 Q. '91 through 2003, entire period of this 9 case. 10 A. Presumably the head of the department at 11 whichever time frame was involved would have likely 12 been aware of what matters were being evaluated 13 within his or her department. 14 Q. Does Abbott recognize as a matter of 15 policy that high spreads may cause customers to 16 submit false claims? 17 MS. CITERA: Objection to the form, outside 18 the scope. 19 BY THE WITNESS: 20 A. I don't think Abbott is able to evaluate 21 motivations and what causes customers to do what 22 they do.</p>	<p style="text-align: right;">Page 429</p> <p>1 behalf of its consignment partners, what did Abbott 2 do to ensure that the claims it's submitting did 3 not contravene the False Claims Act or Antikickback 4 Statute? 5 MS. CITERA: Objection to the form. 6 BY THE WITNESS: 7 A. Back to my other answer, which is there 8 were many people involved in providing these 9 day-to-day services within the pricing and 10 reimbursement departments within Abbott, that they 11 would have had as their objective, compliance with 12 all laws and rules and regulations and that 13 managers would supervise them to seek to ensure 14 that compliance. 15 Q. Well, I understand that that might have 16 been the objective. My question, though, to you, 17 sir, is you're here to testify as to what Abbott 18 did. What did Abbott do? 19 MS. CITERA: Objection, form. 20 BY THE WITNESS: 21 A. To my knowledge, they adhered to that 22 practice.</p>
<p style="text-align: right;">Page 428</p> <p>1 Q. Okay. Well, let's go to Abbott itself. 2 Did Abbott itself submit claims or false claims to 3 Medicaid and Medicare? 4 MS. CITERA: Objection to the form, outside 5 the scope, asking for a legal analysis. 6 BY THE WITNESS: 7 A. Can you repeat the question? 8 Q. Sure. 9 MS. ST. PETER-GRIFFITH: Can you read it back? 10 (Record read as requested.) 11 MS. CITERA: Same objections. 12 BY THE WITNESS: 13 A. I testified that I was unaware that 14 Abbott submitted any claims in its own name. To 15 the extent it did submit claims in its own name and 16 to the extent it submitted claims as part of a 17 contractual service for a customer, it would have 18 submitted the claims. To determine whether they 19 are false is a legal conclusion. 20 Q. Well, did Abbott -- what measures did 21 Abbott undertake to ensure that it complied when it 22 submitted claims either on its own behalf or on</p>	<p style="text-align: right;">Page 430</p> <p>1 Q. How do you know that, or how does Abbott 2 know that? 3 MS. CITERA: Objection to the form, outside 4 the scope. 5 BY THE WITNESS: 6 A. It appears that the question is almost 7 asking me to prove the negative. 8 Q. No. My question to you is, what did 9 Abbott do to ensure that its Home Infusion business 10 unit on behalf of its consignment partners or on 11 behalf of Abbott itself complied with federal and 12 state Medicare and Medicaid fraud and abuse 13 statutes including the False Claims Act and 14 Antikickback Statute? 15 MS. CITERA: Object to form. 16 BY THE WITNESS: 17 A. The employees were given presentations 18 from legal on the Medicare Medicaid fraud and abuse 19 laws generally. They would be familiar with the 20 specific requests of -- the forms themselves would 21 have had instructions and they would read them 22 carefully and would seek to comply with the</p>

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<p style="text-align: right;">Page 431</p> <p>1 requirements of the forms. My -- I suspect as -- I 2 don't know when and if this occurred, but there was 3 an internal audit organization within Abbott that 4 would perform audits of businesses. 5 And to the extent -- I can't state with 6 any certainty that that occurred within Home 7 Infusion and, if it did, when it did. But there 8 was regular auditing functions within Abbott for 9 broad compliance matters, certainly not limited to 10 Medicare matters. 11 Q. Okay. What were they? 12 A. I just described it. The internal audit 13 function within Abbott was to see that its books 14 and records and activities were complying with law. 15 Q. What did Abbott do to ensure that the 16 claims submitted by its Home Infusion business unit 17 complied with federal and state Medicare and 18 Medicaid fraud and abuse statutes? Did it review 19 the claims that were submitted for such compliance? 20 MS. CITERA: Objection to the form. 21 BY THE WITNESS: 22 A. Who is "they"?</p>	<p style="text-align: right;">Page 433</p> <p>1 Q. And Abbott knew that its Home Infusion 2 business unit was submitting claims on behalf of 3 its consignment customers, correct? 4 MS. CITERA: Objection to form, outside the 5 scope. 6 BY THE WITNESS: 7 A. That was -- that was a -- in certain 8 contracts, that would have been a contractual 9 service being provided, yes. 10 Q. And Abbott also knew that its Home 11 Infusion business unit was submitting claims to 12 Medicare and Medicaid on behalf of Abbott's 13 pharmacies, correct? 14 MS. CITERA: Same objections. 15 BY THE WITNESS: 16 A. I testified previously that I'm not aware 17 of that. 18 Q. You might not personally be aware of 19 that. But Abbott certainly knew that it had a 20 provider number and was submitting claims, didn't 21 it? 22 MS. CITERA: Same objections.</p>
<p style="text-align: right;">Page 432</p> <p>1 Q. Abbott. 2 A. You speak about Abbott as if it's a 3 person, meaning the people who were preparing the 4 forms is Abbott. The person to whom that person 5 reported is Abbott. The person whom they sat next 6 to and may have asked a question of, "Does this -- 7 am I reading this instruction correctly?" is 8 Abbott. So, again, you're talking about tens of 9 thousands of people. I don't know how I can answer 10 that question to assure you that everybody within 11 Abbott was in full compliance with all laws or 12 specifically with the Medicare/Medicaid laws at any 13 given moment. 14 Q. Sir, sir -- 15 MS. CITERA: Can you let him finish? 16 BY THE WITNESS: 17 A. I'm done. 18 Q. What did Abbott do? I'm not talking 19 about tens of thousands of people. I'm talking 20 about Abbott. It had its Home Infusion business 21 unit, right? 22 A. Correct.</p>	<p style="text-align: right;">Page 434</p> <p>1 BY THE WITNESS: 2 A. I can't -- I'm not prepared to answer 3 that today because I don't have knowledge to say 4 yes. I can accept your statement as being true to 5 the extent I'll assume your statement to be true. 6 Then I'll say yes. I don't know -- I can't sit 7 here, sitting now in my individual capacity or in 8 my capacity as a witness for Abbott that that's 9 true. I don't have that information. 10 Q. What did you do, sir, to prepare for 11 today's deposition to review information reasonably 12 available to Abbott to determine whether or not 13 Abbott itself maintained a provider number and 14 submitted claims to Medicare or Medicaid? 15 A. I did not -- 16 MS. CITERA: Objection to form. 17 BY THE WITNESS: 18 A. I did not ask anybody that specific 19 question. 20 Q. Do you review any of the thousands of 21 HCFA-1500 forms that have been produced in this 22 case?</p>

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<p style="text-align: right;">Page 435</p> <p>1 A. No.</p> <p>2 Q. What -- Well, let me -- Just for purposes</p> <p>3 of these questions, sir, assume that we've had</p> <p>4 testimony in this case and Abbott has produced</p> <p>5 documents demonstrating that it submitted claims on</p> <p>6 behalf of Abbott itself --</p> <p>7 A. Okay.</p> <p>8 Q. -- through its Home Infusion business</p> <p>9 unit, okay? Fair enough. For claims submitted on</p> <p>10 behalf of its consignment partners or on behalf of</p> <p>11 Abbott's pharmacies, what did Abbott personnel</p> <p>12 within the Home Infusion business unit do to ensure</p> <p>13 that when they submitted those claims, they were in</p> <p>14 compliance with federal and state Medicare and</p> <p>15 Medicaid fraud and abuse statutes?</p> <p>16 MS. CITERA: Object to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. They would have performed their job</p> <p>19 responsibilities to the best of their abilities</p> <p>20 seeking to comply with the laws and instructions of</p> <p>21 any given state or federal statute and would have</p> <p>22 worked to provide that information in compliance</p>	<p style="text-align: right;">Page 437</p> <p>1 MS. CITERA: Object to the form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Not to my knowledge.</p> <p>4 MS. ST. PETER-GRIFFITH: Okay. We've got five</p> <p>5 minutes left on the tape. Why don't we take a</p> <p>6 break now.</p> <p>7 MS. CITERA: Okay.</p> <p>8 THE VIDEOGRAPHER: Going off the record at</p> <p>9 9:49 a.m.</p> <p>10 (A short break was had.)</p> <p>11 THE VIDEOGRAPHER: Beginning of Videotape No.</p> <p>12 2 in the deposition of Mr. Fishman. We're back on</p> <p>13 the record at 10:01 a.m.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Mr. Fishman, you testified earlier that</p> <p>16 the reason behind the written -- the establishment</p> <p>17 of the written policy concerning the non-provision</p> <p>18 of spread or AWP information to Abbott's customers</p> <p>19 was predicated in part upon Abbott's better</p> <p>20 understanding of the government's view of such</p> <p>21 conduct; is that fair?</p> <p>22 MS. CITERA: Object to the form.</p>
<p style="text-align: right;">Page 436</p> <p>1 with those laws.</p> <p>2 Q. Anything else?</p> <p>3 A. Other than the broader topics which I've</p> <p>4 addressed in terms of the compliance training and</p> <p>5 supervision of managers and the opportunity to the</p> <p>6 extent an employee was uncomfortable and thought he</p> <p>7 or she or Abbott was acting out of compliance with</p> <p>8 whatever regulation or statute they were involved</p> <p>9 in complying with, there was the opportunity to</p> <p>10 raise questions within his or her organization or</p> <p>11 if there was discomfort doing that, there was hot</p> <p>12 line information.</p> <p>13 Q. Okay. Other than what you just testified</p> <p>14 to, did Abbott undertake any other measures to</p> <p>15 either provide guidance to its Home Infusion</p> <p>16 reimbursement, you know, staff who was submitting</p> <p>17 claims to Medicare or Medicaid; or did they do any</p> <p>18 other compliance check, for lack of a better term</p> <p>19 --</p> <p>20 MS. CITERA: Objection.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. -- on their reimbursement staff?</p>	<p style="text-align: right;">Page 438</p> <p>1 BY THE WITNESS:</p> <p>2 A. I think I stated it was in response --</p> <p>3 partly in response to that, yes.</p> <p>4 Q. Okay. Certainly by 2003, Abbott knew</p> <p>5 that a Qui Tam action was pending; is that fair?</p> <p>6 A. Yes.</p> <p>7 Q. Why didn't Abbott in 1999 when it was</p> <p>8 notified about the qui tam action that is the</p> <p>9 predicate for this case undertake to change or</p> <p>10 undertake to implement a formal written policy</p> <p>11 concerning the provision of spread or AWP</p> <p>12 information to customers?</p> <p>13 MS. CITERA: Objection to the form, outside</p> <p>14 the scope.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Specifically as to that policy, I don't</p> <p>17 know. But there was not at that time -- there were</p> <p>18 not formal policies in that general arena at that</p> <p>19 time.</p> <p>20 Q. There weren't formal policies pertaining</p> <p>21 to Medicare and Medicaid fraud and abuse -- what do</p> <p>22 you mean by "general arena"?</p>

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<p>1 A. Healthcare compliance. There were</p> <p>2 guidelines issued in 1999, and it evolved to the</p> <p>3 policy stage in 2003.</p> <p>4 Q. Okay. What guidelines?</p> <p>5 A. Each division had operating guidelines</p> <p>6 for program funding.</p> <p>7 Q. Okay. And those were some of the</p> <p>8 documents that we looked at at your last</p> <p>9 deposition?</p> <p>10 A. I don't recall when we looked at them or</p> <p>11 if we looked at them at deposition or I had seen</p> <p>12 them before, I helped draft them, I'm generally</p> <p>13 aware of them.</p> <p>14 Q. Sir, are you aware of where -- I didn't</p> <p>15 ask you this question before the break. The</p> <p>16 exhibits that we have now, 8, 9, and 10 --</p> <p>17 A. Correct.</p> <p>18 Q. -- for any of these exhibits, are you</p> <p>19 aware of where they came from, the source of these</p> <p>20 particular documents?</p> <p>21 A. Boy, that's a broad -- I mean, these</p> <p>22 documents come from all over. I mean, I'd go to go</p>	<p>1 composite Exhibit --</p> <p>2 A. I'm now in Exhibit 8.</p> <p>3 Q. -- 8, okay.</p> <p>4 A. Nothing in Exhibit 8.</p> <p>5 Q. Okay.</p> <p>6 A. Document 039711 -- starting with 0397110</p> <p>7 and ending 0397111, I was the source of that</p> <p>8 document. I believe I was the source of the</p> <p>9 document 0397112, ending 0397114. I was the source</p> <p>10 of the document starting 0397115, ending 0397157.</p> <p>11 I believe I was the source of the document starting</p> <p>12 0397158 ending 0397214. And I was not --</p> <p>13 Q. But were you the source of the disk?</p> <p>14 A. The "Safeguarding Trust" disk?</p> <p>15 Q. Yes.</p> <p>16 A. I provided one, whether -- I mean, I</p> <p>17 provided the "Safeguarding Trust" disk, yes.</p> <p>18 Q. Okay. Sir, why didn't you bring those to</p> <p>19 the deposition we had on your first day or provide</p> <p>20 them before that day?</p> <p>21 A. I can't answer that.</p> <p>22 MS. CITERA: Object to the form.</p>
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<p>1 through -- If you want, I can go through each</p> <p>2 document and identify where I think it sourced</p> <p>3 from.</p> <p>4 Q. No, I just want to know as you sit here</p> <p>5 today, do you know where this particular stack of</p> <p>6 documents came from?</p> <p>7 MS. CITERA: Objection to the form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I'm not sure I understand your question.</p> <p>10 Q. Okay. Who provided these documents, do</p> <p>11 you know, for production today?</p> <p>12 MS. CITERA: Objection to form, outside the</p> <p>13 scope.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I only know about several of them. I</p> <p>16 don't know. I don't know each -- I don't know who</p> <p>17 was the source for each document.</p> <p>18 Q. Which documents do you know who the</p> <p>19 source was for? Well, were you the source for any</p> <p>20 of them?</p> <p>21 A. I was.</p> <p>22 Q. Okay. Which ones? You're looking now at</p>	<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. How come?</p> <p>3 A. I don't know when the documents were</p> <p>4 discovered -- I don't know when the documents were</p> <p>5 provided.</p> <p>6 Q. Did you provide -- The documents that you</p> <p>7 just listed off, did you provide them to Jones Day</p> <p>8 or to Abbott legal prior to your deposition, the</p> <p>9 first day of your deposition last Wednesday? Let</p> <p>10 me ask it a different way.</p> <p>11 Since the date of your last deposition,</p> <p>12 have you provided any documents to Jones Day or</p> <p>13 Abbott for production?</p> <p>14 A. Since that date, no.</p> <p>15 Q. Okay. So any documents that you</p> <p>16 provided, you provided prior to your deposition?</p> <p>17 A. The information regarding the Code of</p> <p>18 Business Conduct, which is all of the documents I</p> <p>19 -- from Exhibit 10 that I recited the numbers of --</p> <p>20 Q. Yes.</p> <p>21 A. -- those were all identified in -- what</p> <p>22 -- Tuesday, the Tuesday afternoon prior to my</p>

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<p>1 testimony on Wednesday.</p> <p>2 MS. ST. PETER-GRIFFITH: Toni, do we know why</p> <p>3 we didn't get those before now?</p> <p>4 MS. CITERA: I don't. I mean, I can't say</p> <p>5 anything more than they were provided to us. I</p> <p>6 don't know why they didn't get out before that. I</p> <p>7 have no idea.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Abbott received a letter from the</p> <p>10 Department of Justice in September of 1999</p> <p>11 notifying it of the qui tam action, right? Do you</p> <p>12 recall that?</p> <p>13 MS. CITERA: Objection to the form, beyond the</p> <p>14 scope.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I have not seen that letter. I have not</p> <p>17 seen that letter.</p> <p>18 Q. I'm going to mark this as the next</p> <p>19 exhibit. It's rather lengthy. Sir, we're not</p> <p>20 necessarily going to get into the substance of it.</p> <p>21 I just want to put on the record and discuss your</p> <p>22 -- Abbott's awareness of the fact of it.</p>	<p>1 as a matter of policy reduce the list prices that</p> <p>2 it reported to the pricing compendia on the subject</p> <p>3 drugs?</p> <p>4 MS. CITERA: Objection to the form, outside</p> <p>5 the scope.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know.</p> <p>8 Q. Sir, if we could take your Deposition</p> <p>9 Exhibit 3, we're going to go through -- before we</p> <p>10 jump -- Hold on.</p> <p>11 MS. CITERA: I have letters, but --</p> <p>12 MS. ST. PETER-GRIFFITH: No, this is --</p> <p>13 MS. CITERA: It's the notice. No, I know what</p> <p>14 it is. I just don't seem to have it. Okay,</p> <p>15 thanks.</p> <p>16 MS. ST. PETER-GRIFFITH: Let me know if I</p> <p>17 wrote on that. Thanks.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Sir, what I'd like to do, before we jump</p> <p>20 into the documents because I have a number of</p> <p>21 documents to go over with you today --</p> <p>22 A. Okay.</p>
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<p>1 A. Okay.</p> <p>2 (Exhibit Fishman 011</p> <p>3 marked as requested.)</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Sir, Exhibit 11 has been marked and it's</p> <p>6 a letter from the United States Department of</p> <p>7 Justice, Civil Division, signed by T. Reed Stephens</p> <p>8 and Mark Lavine; do you see that?</p> <p>9 A. I do. I do.</p> <p>10 Q. And it's addressed to Dan Reidy at Jones</p> <p>11 Day?</p> <p>12 A. Correct.</p> <p>13 Q. Did Abbott receive a copy of this</p> <p>14 document?</p> <p>15 MS. CITERA: Objection to the form, outside</p> <p>16 the scope.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I have no personal knowledge if they did.</p> <p>19 But given where we are today, I have to assume that</p> <p>20 they did.</p> <p>21 Q. Why in 1999 didn't Abbott, when it</p> <p>22 received this letter from the Department of Justice</p>	<p>1 Q. -- what I'd like to do is sort of round</p> <p>2 out Abbott's testimony concerning the existence of</p> <p>3 policies and procedures and the implementation of</p> <p>4 them pursuant to the categories that are outlined</p> <p>5 in your -- the deposition notice, okay?</p> <p>6 A. Fine.</p> <p>7 Q. Let's start with Topic 8. And, sir, I</p> <p>8 will represent to you and Ms. Citera that it was</p> <p>9 made very clear to me that Mr. Fishman and not Mr.</p> <p>10 Sellers is here to talk about the policy. I</p> <p>11 understand that implementation might be something</p> <p>12 else in terms of the day-to-day practice, but I</p> <p>13 just want you to know that.</p> <p>14 MS. CITERA: I mean, I would just say "policy"</p> <p>15 is a very broad term. He's here to talk about</p> <p>16 compliance policies, so that's what he's here to</p> <p>17 testify about.</p> <p>18 MS. ST. PETER-GRIFFITH: I understand that.</p> <p>19 But I'm just telling you what your partner</p> <p>20 represented to me on Sunday, okay.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Sir, if you could look under -- on Page</p>

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<p>1 3, if you could look under Topic 1?</p> <p>2 A. Okay.</p> <p>3 Q. What policies are you aware of concerning</p> <p>4 the areas talked about in Topic 1?</p> <p>5 A. I'm not aware of any policies.</p> <p>6 Q. Did you do anything to prepare today to</p> <p>7 come to speak about these policies?</p> <p>8 A. To the extent there were -- there are --</p> <p>9 were or are policies pertaining to these specific</p> <p>10 pricing categories and descriptions of pricing, I</p> <p>11 did not do anything to look into that. I prepared</p> <p>12 to talk about compliance policies and procedures.</p> <p>13 Q. Okay. Let's go to compliance policies</p> <p>14 and procedures. Are you aware of any compliance</p> <p>15 policies and procedures that respond to the Topic,</p> <p>16 that Roman Numeral I?</p> <p>17 A. I am aware of the OEC policy pertaining</p> <p>18 to reimbursement information and support.</p> <p>19 Q. And is that the policy you've already</p> <p>20 testified about, the '03 policy?</p> <p>21 A. I believe we looked at -- that's the</p> <p>22 policy we looked at last time, yes.</p>	<p>1 talk about compliance policies and that's what he's</p> <p>2 prepared to testify about. And I understand there</p> <p>3 are -- you're saying there's a disconnect, and I</p> <p>4 will look into that.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Sir, with regard to Topic 1, have you</p> <p>7 provided your full testimony as to what you know</p> <p>8 about that, at least with regard to compliance --</p> <p>9 compliance policies and procedures?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you're not aware -- you</p> <p>12 weren't prepared to testify about any other</p> <p>13 policies, right?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. Can you go on to Topic 2, and I'm</p> <p>16 going to ask you if you could just describe the</p> <p>17 same -- or respond to the same questions, I guess.</p> <p>18 A. Item 2 seems to talk about the impact of</p> <p>19 activity as opposed to any policies and procedures</p> <p>20 at all, whether they're within my gamut or not.</p> <p>21 I'm not prepared to testify to the items in No. 2.</p> <p>22 Q. Okay. Are there any policies or</p>
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<p>1 Q. Is there anything else you can think of</p> <p>2 other than what you testified about that policy</p> <p>3 earlier that you either augment or -- I want to</p> <p>4 sort of round out and make sure we've got all of</p> <p>5 your information and testimony concerning this</p> <p>6 particular topic.</p> <p>7 A. Just the broader policy from the Code of</p> <p>8 Business Conduct to comply with all laws and</p> <p>9 regulations, which would include federal healthcare</p> <p>10 compliance laws.</p> <p>11 MS. ST. PETER-GRIFFITH: Toni, to the extent</p> <p>12 that there's sort of a disconnect as to which</p> <p>13 witness is going to testify about policies, I</p> <p>14 understand -- and we're going to go through each of</p> <p>15 these topics. If Mr. Fishman is only prepared to</p> <p>16 talk about compliance, I ask that when we reconvene</p> <p>17 Mr. Sellers or if you're going to designate</p> <p>18 somebody else, let us know. But we obviously want</p> <p>19 a witness to talk about the policies.</p> <p>20 MS. CITERA: Well, I would just -- you know,</p> <p>21 because I know you're going to go through each of</p> <p>22 these topics. As I said, Mr. Fishman is here to</p>	<p>1 procedures in the compliance area that you're aware</p> <p>2 of concerning the pricing impact of Abbott's</p> <p>3 pricing of its HPD products or evaluating the</p> <p>4 pricing impact?</p> <p>5 A. I am not aware -- I don't believe that</p> <p>6 the policies, the 2003 policy that we just</p> <p>7 referenced dealing with reimbursement information</p> <p>8 support -- addresses impact. It is a policy about</p> <p>9 how to go about conducting business. It doesn't</p> <p>10 talk about consequences.</p> <p>11 Q. What about any other policies or</p> <p>12 procedures pertaining to compliance that may</p> <p>13 implicate the pricing impact of Abbott's pricing of</p> <p>14 its HPD products?</p> <p>15 MS. CITERA: Can I just get a clarification</p> <p>16 for you -- from you?</p> <p>17 MS. ST. PETER-GRIFFITH: Sure.</p> <p>18 MS. CITERA: Are you asking in addition to</p> <p>19 what he's already testified to?</p> <p>20 MS. ST. PETER-GRIFFITH: Yeah. If he's</p> <p>21 already testified to his full knowledge, you're</p> <p>22 free to state that, Mr. Fishman.</p>

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<p>1 THE WITNESS: Okay.</p> <p>2 MS. ST. PETER-GRIFFITH: What I want to do is</p> <p>3 close out the --</p> <p>4 THE WITNESS: Okay.</p> <p>5 MS. CITERA: I wanted to be clear that when he</p> <p>6 says "nothing else," that we're clear that's in</p> <p>7 addition to what he already said.</p> <p>8 MS. ST. PETER-GRIFFITH: Sure, sure.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. But I need you to tell me that, Mr.</p> <p>11 Fishman --</p> <p>12 A. I understand.</p> <p>13 Q. -- because -- I also need you to tell me</p> <p>14 if you look at that topic and say, "My prior</p> <p>15 testimony didn't pertain to that topic," I want to</p> <p>16 know that as well. Or if you have no information</p> <p>17 whatsoever, I want to know that as well, okay?</p> <p>18 So with regard to Topic 2, you're not</p> <p>19 aware of any -- other than what you've -- Well,</p> <p>20 with regard to the policies and procedures that you</p> <p>21 testified to earlier, do any of those policies and</p> <p>22 procedures from '91 through 2003 pertain to the</p>	<p>1 BY THE WITNESS:</p> <p>2 A. Sorry. Nothing further.</p> <p>3 Q. Nothing further or nothing at all? I</p> <p>4 want to make sure because your testimony is your</p> <p>5 prior testimony doesn't pertain to this topic; is</p> <p>6 that fair?</p> <p>7 A. Yes.</p> <p>8 Q. So you're not aware of anything with</p> <p>9 regard to compliance that pertains to this topic?</p> <p>10 A. Correct. I was responding to the</p> <p>11 conversation that the two of you had previously</p> <p>12 where my testimony -- I have nothing further to add</p> <p>13 in terms of policies and procedures with which --</p> <p>14 other than what I've already said. But I can still</p> <p>15 maintain that what I said about those policies and</p> <p>16 procedures don't pertain to impact on markets.</p> <p>17 Q. Got you. Okay. Just so we're all on the</p> <p>18 same page.</p> <p>19 And you're not here -- You're not</p> <p>20 prepared to testify generally about policies</p> <p>21 concerning this topic, right?</p> <p>22 A. I'm not aware of any policies that</p>
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<p>1 pricing impact of Abbott's pricing on HPD drug</p> <p>2 products as identified in Subject 2?</p> <p>3 A. To my knowledge, they do not deal with</p> <p>4 impact.</p> <p>5 Q. Okay.</p> <p>6 A. Do not pertain to impact.</p> <p>7 Q. The impact upon Abbott's markets, do you</p> <p>8 see that?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. So your prior testimony concerning</p> <p>11 policies and procedures really don't pertain to</p> <p>12 this topic?</p> <p>13 A. I believe they do not, correct.</p> <p>14 Q. Okay. Is there anything else that you</p> <p>15 are -- that Abbott, as you sit here today, is aware</p> <p>16 of with regard to its compliance policies,</p> <p>17 practices, and procedures that pertain to or relate</p> <p>18 to the pricing impact of Abbott's pricing on HPD</p> <p>19 drug products upon Abbott's markets and sales as</p> <p>20 identified in Topic 2?</p> <p>21 A. Nothing further.</p> <p>22 MS. CITERA: Objection to form.</p>	<p>1 pertain to this subject.</p> <p>2 Q. With regard to Topic 3, if you could</p> <p>3 review that topic, sir, and I'm going to ask you</p> <p>4 the same questions.</p> <p>5 A. If I understand the question, the answer</p> <p>6 would be that I rely on the testimony I've given so</p> <p>7 far.</p> <p>8 Q. Okay. And is that the testimony</p> <p>9 concerning the 2003 policy --</p> <p>10 A. Policy.</p> <p>11 Q. -- and the practice that you testified</p> <p>12 about at the first day?</p> <p>13 A. And the Code of Business Conduct.</p> <p>14 Q. The Code of Business Conduct, okay.</p> <p>15 Anything else that you can think of, or have we</p> <p>16 rounded out that topic?</p> <p>17 A. I believe we've rounded out that topic.</p> <p>18 Q. Okay. And you're not familiar of any --</p> <p>19 outside of the compliance area, you're not here to</p> <p>20 testify today about any other policies concerning</p> <p>21 this topic?</p> <p>22 A. No.</p>

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<p>1 Q. Okay. With regard to Topic 4, same 2 questions. 3 A. Same answer. 4 Q. Same answer, okay. You're not here to 5 testify generally about the policies other than 6 compliance, right? 7 A. Correct. 8 Q. And then for compliance, when you say 9 "same answer," do you mean that you stand on your 10 testimony concerning the -- I'm sorry -- the 2003 11 policy, the Code of Business Conduct, and the 12 practice from '91 through 2001? 13 A. Correct. 14 Q. Anything else? 15 A. Not to my knowledge. 16 Q. Have we exhausted your knowledge on 17 compliance matters pertaining to this topic? 18 A. Yes, you have. 19 Q. Let's go on to Topic 5. 20 A. Based on the wording of No. 5, I would 21 give the same answer as I gave to No. 2, which is 22 the testimony I gave previously about policies and</p>	<p>1 Q. I'm sorry. You may have; I just didn't 2 hear it. 3 A. Okay. 4 Q. And did you include AHD? 5 A. I did not, but I would add AHD. I'm 6 sorry. 7 Q. Okay. That's all right. I just want to 8 make sure I cover all my -- all the letters that I 9 am aware of? 10 A. All your D's. 11 Q. So is it fair to say, then, that prior to 12 the implementation of the 2003 written policies, if 13 Abbott HPD only had a practice, that the other 14 divisions only had a practice as well? 15 MS. CITERA: Objection to the form. 16 BY THE WITNESS: 17 A. I can state from reading through -- the 18 conversations I've had and the testimony I've read 19 from prior depositions that both Ross and -- that 20 PPD had the same practice of not providing AWP or 21 AWP information to customers. 22 And I read -- I forgot to mention, I read</p>
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<p>1 procedures, the three that we've reiterated, don't 2 address impact. 3 Q. Okay. So your answers to No. 5 are the 4 same as your answers to No. 2? 5 A. Correct. 6 Q. You're not otherwise aware of any other 7 policies -- Well, you're not aware of any policies 8 and you're not prepared to testify about 9 noncompliance policies pertaining to Topic 5? 10 A. Correct. 11 Q. What about Topic 6? 12 A. I am not aware that divisions -- other 13 divisions beyond HPD had formalized -- stated or 14 formalized policies concerning AWP when HPD did 15 not. 16 Q. Okay. So if Ross had one, HPD had one? 17 A. I'm not aware that the other divisions -- 18 Ross, PPD, AI, or CPD -- had -- or ADD had 19 policies, stated or formalized policies concerning 20 AWP when HPD did not. 21 Q. Does that include PPD? Did you -- 22 A. If I didn't, I would have included PPD.</p>	<p>1 Mike Tutell's, which I did not -- previously did 2 not see his excerpts? It was described to me, so 3 -- and if you match up my testimony from the last 4 deposition, Tutell's what would not have been a 5 deposition excerpt that I saw. But in preparing 6 for today, I did read his deposition testimony. 7 And it strikes me that Ross also had that 8 -- my recollection from reading his testimony is 9 that Ross also had that practice of not providing 10 AWP information. 11 Q. Did PPD? 12 A. PPD, in reading through Fiske's, that 13 would be correct. 14 Q. And AHD? 15 A. I did not read any information or talk to 16 anybody about AHD. I can't answer that. 17 Q. Other than speaking to the compliance 18 policies and the policies and practices concerning 19 the provision of AWP and spread information, are 20 you aware of or are you prepared to testify about 21 any other policies pertaining to Topic 6? 22 A. I am not.</p>

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<p style="text-align: right;">Page 459</p> <p>1 Q. Moving on to Topic 7, which spills over 2 to the next page, and then with regard to Topic 8, 3 we'll go over documents in a minute. So this is 4 the last topic we're going to talk about under 5 Topic -- the last subtopic we're going to talk 6 about under Topic 8. 7 A. My interpretation of Item 7 on the bottom 8 of Page 3 to the top of Page 4 is that it is not 9 calling for policies or procedures or practices. 10 Q. Well, were there any policies concerning 11 Abbott's price setting that related to compliance 12 with federal or state Medicare and Medicaid fraud 13 and abuse statutes, other than what you've already 14 testified -- 15 A. Other than what I testified to, I'm not 16 aware of any. 17 Q. I know you testified about this already 18 this morning. I just wanted to make sure that we 19 round out your knowledge on this. 20 A. I understand. 21 Q. So with regard to Topic 8, have we 22 exhausted your knowledge or information pertaining</p>	<p style="text-align: right;">Page 461</p> <p>1 for the operative period of this case, which is '91 2 to 2003? 3 MS. CITERA: Object to form. 4 BY THE WITNESS: 5 A. My recollection in answering this at 6 length on last Wednesday was I mentioned briefly 7 AMP and best price, and that was not something you 8 were interested in. 9 Q. Well, sir, I don't think it's fair to 10 characterize that that's not something I was 11 interested in. What do you mean AMP and best 12 price? 13 A. Regarding -- regarding activities in 14 preparing and evaluating AMP and best price 15 calculations, which is part of the overall 16 regulatory scheme but has not been the subject 17 matter of our discussions. 18 Q. Okay. Well, explain what you mean by 19 that. 20 A. I -- regarding the CMS official, I had 21 conversations with CMS involving the AMP and best 22 price calculations for Calcijex dating back through</p>
<p style="text-align: right;">Page 460</p> <p>1 to the enumerated subtopics therein? 2 A. Yes. 3 Q. Flip the page to Topic 1. And we're 4 going to go over in more detail, sir, once we start 5 looking at the documents, different applications of 6 policies and issues identified in Topic 7. But I 7 want to make sure that just in terms of discussing 8 things, we round out your knowledge without looking 9 at the particular documents. 10 A. I understand. 11 Q. Okay. Under Topic 7, Sub 2, sir, if you 12 could look under Item A, and the topic generally 13 deals with compliance with all Medicare or Medicaid 14 statutes, regulations, policies, and procedures, 15 requests from any CMS officials, intermediary or 16 state Medicaid programs for information from 17 Abbott, evaluation and analysis of government 18 regulations and statutes; do you see that? Under A 19 have we identified or have you already testified 20 about all measures undertaken by Abbott to ensure 21 that its HPD was in compliance with all state and 22 federal Medicare and Medicaid laws and regulations</p>	<p style="text-align: right;">Page 462</p> <p>1 the '90s. 2 Q. Okay. So you're saying that Abbott had a 3 conversation with CMS officials about Calcijex 4 pricing, AMP, and best price? 5 A. Correct. 6 Q. Okay. Any other communications that 7 you're aware of? 8 A. There were -- 9 MS. CITERA: Objection to form. Sorry. 10 BY THE WITNESS: 11 A. There were in the 2000 to 2002 time 12 frame, maybe later, I don't remember exactly when 13 it started, considerable interaction with CMS and 14 intermediaries involving least costly -- least 15 costly alternative involving our renal franchise. 16 Q. Okay. Anything else? 17 A. Not that I'm aware of. 18 Q. Okay. Have we exhausted Abbott's 19 testimony of all measures taken by Abbott to ensure 20 that its HPD was in compliance with all state and 21 federal Medicare and Medicaid fraud -- laws, 22 regulations -- laws and regulations for the</p>

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<p style="text-align: right;">Page 463</p> <p>1 operative period of this case?</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. We're assuming all my previous testimony,</p> <p>5 right?</p> <p>6 Q. Yes, yes.</p> <p>7 A. Yes.</p> <p>8 Q. I'm sorry, yes.</p> <p>9 A. Yes.</p> <p>10 Q. With regard to Item B, I believe you</p> <p>11 testified that there were no measures undertaken;</p> <p>12 is that accurate under Item B?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. My recollection of that testimony is that</p> <p>16 the question assumed that there were concerns</p> <p>17 raised. My answer was the people that I talked</p> <p>18 with to whom Mr. Tutell said he raised concerns,</p> <p>19 they did not recall those concerns having been</p> <p>20 raised. So we couldn't take action in regard to a</p> <p>21 concern that the people I talked to said was never</p> <p>22 raised.</p>	<p style="text-align: right;">Page 465</p> <p>1 type that would have given them reason to consider</p> <p>2 his inquiry any different than a general inquiry.</p> <p>3 So it would not have been a memorable matter where</p> <p>4 a concern would have been raised in such a way that</p> <p>5 action would likely have followed.</p> <p>6 Q. So Abbott doesn't necessarily doubt that</p> <p>7 the conversations may have taken place; it's just</p> <p>8 it doesn't believe that it was a major issue that</p> <p>9 was raised?</p> <p>10 MS. CITERA: Object to the form, outside the</p> <p>11 scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. It appears to be a difference between how</p> <p>14 the message was communicated and how the message</p> <p>15 was received.</p> <p>16 Q. Okay. What do you mean by that?</p> <p>17 A. In reading Mr. Tutell's testimony, he</p> <p>18 suggested or stated that he raised concerns about</p> <p>19 the AWP matter. The people to whom he said he</p> <p>20 raised those concerns, in specifically asking them</p> <p>21 those questions and having that precise discussion,</p> <p>22 their recollection was that there was nothing --</p>
<p style="text-align: right;">Page 464</p> <p>1 Q. Well, did you talk with everyone who Mr.</p> <p>2 Tutell may have spoken with?</p> <p>3 A. I can't answer that because I don't know</p> <p>4 -- Everyone he said he talked to, yes. I spoke --</p> <p>5 I testified I spoke with Matt Fisher. I spoke with</p> <p>6 Melissa Penslavey. I spoke with Cliff Berman. And</p> <p>7 while Brian Taylor's name was not specifically</p> <p>8 mentioned, in his deposition testimony, Brian was</p> <p>9 legal counsel to Ross in the time frame that he</p> <p>10 appeared to be discussing.</p> <p>11 Q. Does Abbott doubt that -- Mr. Tutell's</p> <p>12 testimony concerning his raising concerns about</p> <p>13 AWP?</p> <p>14 MS. CITERA: Object to the form, outside the</p> <p>15 scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Factually, Abbott believes that the</p> <p>18 people that he stated in his deposition testimony</p> <p>19 that he raised concerns, those folks -- those</p> <p>20 people's testimony or those people's descriptions</p> <p>21 of any activities surrounding that is that the --</p> <p>22 any concerns he may have raised were not of the</p>	<p style="text-align: right;">Page 466</p> <p>1 there was no concerns that he raised that they can</p> <p>2 recall. It doesn't mean they didn't have the</p> <p>3 conversation. But when you have multiple</p> <p>4 conversations with people over a long period of</p> <p>5 time, you don't recall every conversation. And his</p> <p>6 conversation with them, to them, was not memorable.</p> <p>7 Q. And through your investigation, you were</p> <p>8 able to determine that no affirmative action was</p> <p>9 taken based upon the communication then?</p> <p>10 MS. CITERA: Objection to the form, outside</p> <p>11 the scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I feel like the question is, "When did</p> <p>14 you stop beating your wife?" in some ways.</p> <p>15 Q. Well, no. I don't -- The question is</p> <p>16 simply, you were able to ascertain that while Mr.</p> <p>17 Tutell may have had the conversation, it didn't</p> <p>18 raise any -- it wasn't a conversation that sort of</p> <p>19 raised a fire alarm; is that fair?</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. It wasn't perceived as raising fire</p>

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<p style="text-align: right;">Page 467</p> <p>1 alarms. Whether he thought he was, it was not 2 perceived as having done so. So no action was 3 taken regarding what was perceived as a typical 4 conversation. 5 Q. That answers my question. 6 A. Okay. 7 Q. Is there anything else that you're aware 8 of or have we rounded out and exhausted your 9 testimony concerning the measures undertaken by 10 Abbott regarding Mr. Tutell's conversations with 11 his supervisor, in-house counsel? 12 A. We've rounded out my knowledge on that 13 subject, yes. 14 Q. Let's look at Item C. 15 A. My testimony generally is completely 16 responsive to that. I would say all training 17 undertaken, I did not and cannot articulate every 18 single presentation was made. But I described the 19 practice over the long period of time, that 20 multiple presentations were made to multiple 21 business units. So yes, it's consistent with -- I 22 have responded to this question in the best of my</p>	<p style="text-align: right;">Page 469</p> <p>1 MS. ST. PETER-GRIFFITH: Seems like yesterday 2 to you. I've had three intervening depositions 3 since then. Four, actually. 4 BY THE WITNESS: 5 A. I've had two transactions die, so ... I 6 believe my testimony from last Wednesday and today 7 is fully responsive to this item, to the best of my 8 knowledge. 9 Q. Okay. And, again, we'll get into some of 10 the specifics as we look at the documents. But I 11 just wanted to generally, we've exhausted your 12 knowledge -- 13 A. Knowledge. 14 Q. -- of the policies and procedures? 15 A. We have. 16 Q. Under Item E, if you could take a look at 17 that. 18 A. Same answer. We've exhausted my 19 knowledge on this subject and that my testimony is 20 responsive to this. 21 Q. To this question? 22 A. To this question.</p>
<p style="text-align: right;">Page 468</p> <p>1 ability. 2 Q. And fully to the best of your ability? 3 A. Fully to the best of my ability. 4 Q. And to the extent that you -- there's 5 some presentations that you can't recall, you -- 6 your testimony is you've testified to everything 7 you can recall? 8 A. Correct. 9 Q. Or that you're aware of? 10 A. That's correct. 11 Q. We're going to get into the specifics of 12 some of those presentations once we look at the 13 documents. But I want to make sure there isn't 14 anything else that you recall or want to testify 15 about in general -- 16 A. No. 17 Q. -- about the training? 18 A. No, there's nothing further. 19 Q. Let's go on to Item D. 20 A. I believe my testimony both yesterday -- 21 or yesterday -- seems like yesterday. 22 MS. CITERA: Feels like yesterday.</p>	<p style="text-align: right;">Page 470</p> <p>1 Q. Okay. I did have a question, actually a 2 follow-up question on this. With the onset of 3 "Safeguarding Trust" and the more formalized 4 procedures concerning reporting, I know that as 5 part of the Ross CIA, Abbott did its own reporting 6 and monitored either calls into the hot line or 7 reports that were made; is that fair? 8 A. Yes. 9 Q. Prior to the '01 through '03 time period 10 when those procedures were being implemented 11 incident to the Ross settlement and Ross CIA and 12 formalized, prior to that point in time, did Abbott 13 have a way of tracking either hot line complaints 14 or reports concerning noncompliance? Was there a 15 log someplace, or was there a way to track historic 16 complaints? 17 MS. CITERA: Objection to form. 18 BY THE WITNESS: 19 A. My recollection is that in discussing the 20 matter with Charlie Brock, was prior to the 21 institution of a specific compliance hot line that 22 -- as reflected in presentations and in the Code of</p>

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<p style="text-align: right;">Page 471</p> <p>1 Business Conduct, calls were to -- directed to the 2 Office of General Counsel and then triaged from 3 there. I am not aware that there are formal logs 4 reflecting that. I would not be surprised if there 5 are, but I don't know that there are. 6 Q. What was done to triage the calls? What 7 do you mean by "triage"? 8 A. Triage, if a call comes in and someone is 9 complaining that my boss isn't being fair to me -- 10 Q. Okay. 11 A. -- and it's somebody on the factory floor 12 in Austin, Texas, then general counsel wouldn't 13 address that matter. The call would be directed to 14 an HR person Austin, Texas, to investigate the 15 matter and find out does this person have a 16 legitimate complaint or are they just unhappy with 17 they didn't get a promotion and someone else did. 18 Again, any number -- it could be any number of 19 matters. Again, it's a broad compliance matter. 20 So it certainly was not limited to only calls that 21 people had and concerns people had about healthcare 22 compliance matters.</p>	<p style="text-align: right;">Page 473</p> <p>1 A. Correct. 2 Q. Okay. Do the district managers have a 3 way of monitoring compliance with the practice if 4 their field sales reps were sort of, you know, 5 spread out all over the country doing individual 6 sales calls? 7 MS. CITERA: Object to the form. 8 BY THE WITNESS: 9 A. I have not had a specific conversation 10 with anyone precisely about that. My 11 understanding, historic understanding of just 12 having worked with the business is that district 13 managers would work with sales reps. And I don't 14 -- I'm not aware of any procedure or policy or 15 practice that it was, but it would just be 16 managerial support and that they would -- they 17 would be out in the field with sales reps. Whether 18 it was every sales rep and how often, my guess is 19 it probably would depend on the size of the 20 territory, the number of sales reps, and the 21 practice of that particular manager. 22 Q. Well, if -- for those sales calls that</p>
<p style="text-align: right;">Page 472</p> <p>1 Q. Prior to the implementation of the OEC 2 policies, was there a way to monitor compliance 3 complaints about violations of the practice that 4 we've -- that you've testified to at length 5 concerning Abbott's prohibition against the 6 provision of AWP or spread information to 7 customers? 8 MS. CITERA: Objection to form. 9 BY THE WITNESS: 10 A. The manner in which it could be monitored 11 would be the two manners in which I've described 12 already, which would be as a direct supervisor, you 13 see that your direct report is not complying with 14 the practice and identify that act at that time or 15 subsequent to it having occurred. Secondly would 16 be through the hot line. 17 Q. Okay. Now, do managers go out into the 18 field with sales reps, for example? 19 A. Managers is a -- I'm a manager. I don't 20 know what -- 21 Q. Okay. For the sales force, their 22 superiors are the district managers, is that --</p>	<p style="text-align: right;">Page 474</p> <p>1 the managers were not in attendance, how 2 practically could the district managers monitor and 3 enforce the practice? 4 MS. CITERA: Objection to the form. 5 BY THE WITNESS: 6 A. There were detail logs that sales reps 7 prepared demonstrating who they called on and what 8 they did. The only way that I can think of that 9 would provide the blanket assurance that you're 10 asking about would be to tape-record every single 11 conversation. Otherwise, there's no way of assuring 12 compliance with thousands of sales reps out on the 13 street talking with doctors and healthcare 14 professionals. 15 Q. Okay. Are you aware of any monitoring 16 initiative other than what you've testified about 17 concerning the district managers, you know, working 18 with their sales reps? 19 A. Other than what I -- there were the 20 guidelines, operating guidelines that went into 21 greater detail and provided -- attempted to provide 22 clear guidance to the Abbott employees as to how to</p>

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<p>1 manage the -- those issues when it comes to dealing 2 with professionals, gifts and entertainment, and 3 clinical study grants and medical education grants 4 and continuing medical education, and matters of 5 that sort, program funding. So there were those 6 types of efforts made to provide greater guidance 7 to the people who were responsible for submitting 8 -- would be interacting with the healthcare 9 professions and then submitting expense reports 10 reflecting their interactions. 11 Q. So we rounded out your familiar with Item 12 E? 13 A. Correct. 14 Q. Okay. Item F, other than the policies 15 that we discussed, the implementation of the '03 16 policy and the practice and your testimony 17 concerning that, do you have any other testimony 18 concerning -- or familiarity or awareness on behalf 19 of Abbott concerning all policies, procedures that 20 Abbott maintained concerning spreads and spread 21 marketing and the implementation of those policies 22 and procedures?</p>	<p>1 knowledge of the types of employees? 2 A. Yes. 3 Q. Moving on to -- And we've exhausted that 4 testimony on that? 5 A. Correct. 6 Q. Okay. Moving on to Item H. This I don't 7 think we've testified about. 8 A. To my knowledge, there were no actions 9 taken within HPD pertaining to -- incident to the 10 CIA with respect to HPD's distribution of Ross 11 products, and I did ascertain that there were no 12 HPD employees as covered persons under the Ross 13 CIA. 14 Q. Okay. 15 A. And those conversations, I should have -- 16 could have identified that last Wednesday, was 17 through Kathy Faulter, who was the director of 18 efficacy and compliance of Ross during -- during 19 and after the CIA. I don't know what her position 20 is today. I believe she's still in the compliance 21 arena at Abbott. 22 Q. Well, Abbott was aware that its HPD</p>
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<p>1 MS. CITERA: Objection to the form. 2 BY THE WITNESS: 3 A. I have no further testimony. 4 Q. Let's move on to Item G. Do you have any 5 other -- Or have we discussed -- Have you testified 6 to Abbott's complete knowledge of the 7 identification of all individuals responsible for 8 developing and enforcing compliance programs, 9 initiatives, policies and procedures that refer, 10 relate, pertain -- refer, relate, or pertain to 11 Medicare or Medicaid? 12 MS. CITERA: Objection to form. 13 BY THE WITNESS: 14 A. I think I testified fully with respect to 15 individuals in a broader -- at times in a broader 16 category as opposed to specific individuals over a 17 longer period of time. 18 Q. So you might not have -- You've 19 identified the sort of categories of employees and 20 may not have identified each and every employee? 21 A. Correct. 22 Q. But have we covered your -- Abbott's full</p>	<p>1 division provided on a consignment basis Ross 2 products, right? 3 MS. CITERA: Objection to form, outside the 4 scope. 5 BY THE WITNESS: 6 A. I have not talked to anybody that was 7 aware that Ross products were part of the 8 consignment of -- through HPD distribution. And 9 the time frame is '91 through 2003? 10 Q. '91 through the closure of Home Infusion. 11 A. Home Infusion? 12 Q. Yeah. Well, did you talk to Ms. Tobiason 13 about it? I will submit to you, sir, I took Ms. 14 Tobiason's testimony over three days -- 15 A. Okay. 16 Q. And she did testify to that. 17 A. I did not -- It's a really different 18 question, which is incident to the Ross CIA, I'm 19 not aware of any actions taken. I -- 20 Q. I -- 21 A. I -- I wouldn't doubt that as part of the 22 Home Infusion business that there were nutritional</p>

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<p style="text-align: right;">Page 479</p> <p>1 products that ultimately came through Ross that 2 were part of the compounding efforts of Home 3 Infusion. 4 Q. Usually through total parenteral 5 nutrition or enteral nutrition? 6 A. Uh-huh. 7 Q. Okay. In part because of the nature and, 8 you know, the prior testimony on it is because of 9 the nature of the client base and patients who are 10 in the home infusion arena. 11 Sir, if Abbott is providing -- the reason 12 why I asked the predicate question is as a 13 predicate to this question, if Abbott is providing 14 on a consignment basis Ross products, why didn't 15 Abbott undertake any actions concerning identifying 16 and reporting HPD's conduct in selling and 17 distributing Ross products? 18 MS. CITERA: Objection to the form, outside 19 the scope. 20 BY THE WITNESS: 21 A. There seemed to be several pieces of 22 that. Piecing -- As I understand that question,</p>	<p style="text-align: right;">Page 481</p> <p>1 or not the same problems that existed in the Ross 2 products division for that time period similarly 3 existed in the HPD Home Infusion arena -- 4 MS. CITERA: Objection. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. -- for that same time period? 7 MS. CITERA: Objection to form. 8 BY THE WITNESS: 9 A. I'm not prepared to testify as to what 10 Abbott did in -- in reviewing and negotiating the 11 CIA for Ross, who it may have spoken to and what it 12 may have done, what inquiries it may have made of 13 the Home Infusion business with respect to the Ross 14 products that went through the HPD distribution 15 network. 16 Q. Well, was there an evaluation done? 17 MS. CITERA: Objection to form. 18 BY THE WITNESS: 19 A. I'm not -- I don't know. 20 Q. Okay. I can submit to you, sir, that 21 I've reviewed all the Ross CIA submissions by 22 Abbott. And I have seen absolutely no disclosure</p>
<p style="text-align: right;">Page 480</p> <p>1 piecing that question together, my first thought is 2 when the Ross CIA was entered into in July 2003, 3 the Home Infusion business had been closed down. 4 So there wouldn't be the connection between the CIA 5 and Home Infusion, regardless of what -- the 6 products having gone through that distribution 7 network previously. 8 Q. Well, in terms of identifying conduct or 9 through -- specified in the CIA on an ongoing 10 basis, perhaps that's the case. But do you 11 understand that the CIA pertained to covered 12 conduct that predated 2003? 13 MS. CITERA: Objection to the form. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. I mean, it was about -- Ross CIA was 16 about Ross' conduct within a particular time frame; 17 is that fair? 18 MS. CITERA: Objection to form, outside the 19 scope. 20 BY THE WITNESS: 21 A. That is -- That's a fair statement, yes. 22 Q. What did Abbott do to ascertain whether</p>	<p style="text-align: right;">Page 482</p> <p>1 of the fact that the Hospital Products Division was 2 distributing Ross pumps, Ross, you know, enteral 3 products as part of the Home Infusion business. 4 And, you know, my first question is why not? Why 5 didn't you disclose that? 6 MS. CITERA: Objection to the form, outside 7 the scope. 8 BY THE WITNESS: 9 A. I don't have enough familiarity with the 10 Ross CIA to know about the scope of the Ross CIA 11 that it would or would not have directed that type 12 of disclosure. 13 Q. Okay. Did you do anything in evaluating 14 information reasonably available to Abbott in 15 preparing for Item H? 16 A. Can you restate the question? 17 Q. Sure. Let me state it this way: What 18 did you do to prepare for Abbott's deposition here 19 today concerning the topic in -- or the Subtopic H 20 of Item 7? 21 A. I specifically ascertained from a source 22 that was most able to respond whether there was any</p>

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<p style="text-align: right;">Page 483</p> <p>1 HPD employees that were covered persons under the</p> <p>2 CIA.</p> <p>3 Q. Other than evaluating whether or not</p> <p>4 there were any HPD employees who were covered</p> <p>5 persons, did you do anything else?</p> <p>6 A. I had conversations with Brian Taylor as</p> <p>7 counsel of Ross at that time. I had conversations</p> <p>8 with Ginnie Tobiason and Mike Sellers, but this</p> <p>9 subject was not addressed.</p> <p>10 Q. Okay. Other than talking with someone</p> <p>11 about the identity of possible covered persons, did</p> <p>12 you do anything else to prepare for this topic?</p> <p>13 A. No.</p> <p>14 Q. Okay. Do you have any other information</p> <p>15 or testimony concerning the subject matter of Topic</p> <p>16 7, Subtopic H?</p> <p>17 A. I have no further information regarding</p> <p>18 Abbott HPD incident -- action incident to the CIA</p> <p>19 regarding the distribution of HPD products, Ross'</p> <p>20 products through HPD's distribution.</p> <p>21 MS. ST. PETER-GRIFFITH: And is it still</p> <p>22 Abbott's position that Mr. Fishman is not here to</p>	<p style="text-align: right;">Page 485</p> <p>1 Do you want to take a break?</p> <p>2 MS. CITERA: Okay. Sure.</p> <p>3 THE WITNESS: That would be fine.</p> <p>4 THE VIDEOGRAPHER: Going off the record at</p> <p>5 10:57 a.m.</p> <p>6 (A short break was had.)</p> <p>7 THE VIDEOGRAPHER: Beginning Videotape No. 3,</p> <p>8 the deposition of Mr. Fishman. We're back on the</p> <p>9 record at 11:11 a.m.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Mr. Fishman --</p> <p>12 MS. ST. PETER-GRIFFITH: If we can mark this</p> <p>13 as the next exhibit.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Can I advise you -- I'm sorry.</p> <p>16 Q. No, go right ahead. Go ahead. Go right</p> <p>17 ahead before she marks.</p> <p>18 A. During the break, we were able to reach</p> <p>19 the person who found the Abbott Laboratories Inc.</p> <p>20 Home Infusion Services Reimbursement Operations</p> <p>21 Compliance Program, but she could not shed any</p> <p>22 light as to its source or history. She just was</p>
<p style="text-align: right;">Page 484</p> <p>1 talk about topic 7, Item 1?</p> <p>2 MS. CITERA: It is.</p> <p>3 MS. ST. PETER-GRIFFITH: Okay. The United</p> <p>4 States submits its, you know, vigorous objection to</p> <p>5 that because this entire topic seeks to identify</p> <p>6 Abbott's conduct -- not TAP's conduct, Abbott's</p> <p>7 conduct.</p> <p>8 MS. CITERA: And as stated previously, this</p> <p>9 goes to impact from TAP. And we believe that is</p> <p>10 something that Judge Bowler has already ruled on.</p> <p>11 And as a result, we will not be providing -- I also</p> <p>12 don't think it's relevant. But we will not be</p> <p>13 providing testimony on this subject.</p> <p>14 MS. ST. PETER-GRIFFITH: Okay. I will tell</p> <p>15 you, this deposition is going to remain open until</p> <p>16 we resolve this issue. So, you know, we don't</p> <p>17 necessarily have to burn a lot of time on it. If</p> <p>18 you're telling me he's not going to testify on it,</p> <p>19 then we will state our objection and we'll deal</p> <p>20 with it at another point in time. But we cannot</p> <p>21 close this deposition until that issue is resolved.</p> <p>22 I think we're at a good breaking point.</p>	<p style="text-align: right;">Page 486</p> <p>1 able to find it. She found it in a file, came</p> <p>2 across it -- more by happenstance, I believe.</p> <p>3 Q. Okay.</p> <p>4 A. So we're still looking.</p> <p>5 MS. ST. PETER-GRIFFITH: Oh. Toni, if I could</p> <p>6 ask wherever that -- they found that file drawer</p> <p>7 quite by happenstance, if they could search for</p> <p>8 other Home Infusion documents. I know you're not</p> <p>9 the document person.</p> <p>10 MS. CITERA: Why do you think I moved to New</p> <p>11 York?</p> <p>12 MS. ST. PETER-GRIFFITH: But for Home</p> <p>13 Infusion, we've had testimony that -- Bruce Rodman</p> <p>14 especially produced a whole bunch of documents, and</p> <p>15 Abbott did not. Apparently there was at one point</p> <p>16 in time an initiative to kind of clean out the</p> <p>17 files of Home Infusion. So if there's a file</p> <p>18 drawer somewhere, we would ask it be searched</p> <p>19 because there are a whole bunch of documents which</p> <p>20 are even referenced in this particular compliance</p> <p>21 plan that we've never received. And we were told</p> <p>22 it's likely they may not exist, so ... Now, if we</p>

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<p>1 could mark this as Exhibit 13. 2 Any time, sir, that you need to clarify 3 anything, just let us know. 4 (Exhibit Fishman 012 5 marked as requested.) 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Sir, Exhibit 13? -- 12, a document that I 8 will represent was produced pursuant to a subpoena 9 by former Abbott employee Anne Renick whose 10 deposition I took on Monday. And she identified it 11 as a handbook she received from Abbott. We're not 12 going to go into it in detail, but there are -- 13 There is a discussion on Page 945 and 957. 14 MS. CITERA: She's referring to the Bates 15 numbers. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. And I'm referring to the Bates numbers. 18 A. I got it. AMA guidelines? 19 Q. Actually, I think, yes, the AMA 20 guidelines. And then if you flip to the next page, 21 that's on -- Yes, I'm sorry. Let's start on 946. 22 A. Under Medicare fraud and abuse?</p>	<p>1 -- I'm sorry -- and Medicare fraud and abuse? 2 MS. CITERA: Objection to form. 3 BY THE WITNESS: 4 A. I would say yes, it appears to emanate 5 from the regulatory affairs department within 6 Abbott, within HPD; so if it was available outside 7 that group, I don't know. 8 Q. Okay. What is the regulatory affairs 9 department within HPD? 10 A. Regulatory affairs would have been -- 11 Q. Okay, sure. 12 A. -- predominantly, I'm not certain, 13 absolutely certain, predominantly would have been 14 FDA-related regulatory matters. 15 Q. Would they have any oversight -- I mean, 16 obviously they published a section dealing with 17 Medicare fraud and abuse? 18 A. Right. 19 Q. Would they have any responsibility -- and 20 when I say "they" I mean the regulatory affairs 21 department within the HPD -- would they have any 22 responsibility for establishing policies,</p>
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<p>1 Q. Correct. We'll start above that. 2 There's compliance issue pertaining to gifts to 3 government officials. And then there's the 4 Medicare and Medicaid fraud and abuse; do you see 5 that? 6 A. Yes, I see that. 7 Q. Do these appear to be policies that for 8 the May 1998, if we look at the front time period, 9 were in place at Abbott? 10 A. You mentioned before the Item B, we're 11 talking about Medicare fraud and abuse, Item A. 12 Q. Item A through -- 13 A. A through -- 14 Q. 948 where it says -- where it discusses 15 the summary. 16 A. I need to read it, please. 17 Q. Sure. Take your time. 18 A. Okay. I have generally reviewed it. 19 Q. Okay. Does this appear to be another 20 source that may have been available to Abbott 21 employees within the Hospital Products Division 22 concerning compliance matters and federal Medicare</p>	<p>1 practices, or procedures concerning Medicare and 2 Medicaid fraud and abuse or monitoring or 3 implementing compliance with those policies, 4 practices, and procedures? 5 MS. CITERA: Objection to form. 6 BY THE WITNESS: 7 A. I would not have expected them to play 8 that role. 9 Q. Okay. You testified, I believe, on 10 Wednesday, that that was -- that that type of -- in 11 terms of dealing with Medicare and Medicaid fraud 12 and abuse statutes and regulations, that compliance 13 matters and policies and practices, at least until 14 the creation of the Office of Ethics and Compliance 15 fell within the purview of the legal department; is 16 that fair? 17 A. That's fair. 18 Q. Okay. Do you know whether the regulatory 19 affairs department conferred with or consulted with 20 the legal department concerning the contents of 21 this particular document? 22 A. I do not know for certain that they did.</p>

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<p style="text-align: right;">Page 491</p> <p>1 But in reviewing -- reviewing its text and 2 inferring what I know about non-lawyers' writing 3 and lawyer writing, this is a -- this is a concise 4 statement of the law. 5 MS. CITERA: I just want to make clear that 6 he's referring to the fraud and abuse section. 7 BY THE WITNESS: 8 A. Fraud and abuse section, correct. 9 Q. Starting on 946? 10 A. Correct, 946 through 948, those 11 provisions, I would say at a minimum were edited by 12 a lawyer, whether they were initially prepared by 13 one. And I do note that on 945, the legal 14 department is identified as a contact under the 15 previous subject matter dealing with AMA 16 guidelines, which Medicare fraud and abuse seems to 17 be part of. 18 Q. So from your review of the content, you 19 would conclude that it likely was reviewed by 20 someone in the legal department? 21 A. I would believe that to be true, yes. 22 Q. Mr. Fishman, for that particular document</p>	<p style="text-align: right;">Page 493</p> <p>1 the documents that were produced here today 2 accurately reflect Abbott's position or its view as 3 expressed in those particular documents? 4 MS. CITERA: Objection to the form, outside 5 the scope. 6 BY THE WITNESS: 7 A. The breadth of that statement is such 8 that I have to qualify my answer because that's -- 9 that is -- your question assumes that every word on 10 every page reflects Abbott's position, and I don't 11 know that for certain. 12 Q. Well, okay. Let me go back. To the 13 extent that Abbott has produced or Ms. Renick has 14 produced materials that were submitted to or that 15 were disseminated to Abbott employees, is it fair 16 to say that for -- as of the date of whatever 17 particular document, that whatever the content of 18 the presentation is or the document is, that that 19 reflects what Abbott intended to communicate to the 20 audience about the subject matter? 21 MS. CITERA: Same objections. And I just also 22 want to note that one of these presentations was</p>
<p style="text-align: right;">Page 492</p> <p>1 produced by former Abbott employee Ms. Renick, for 2 the production that was made concerning compliance 3 documents, which is Exhibit 1 and its subcomponents 4 and then the exhibits that we have today, Exhibit 5 -- Composite Exhibit 8 -- is it 8, 9, 10? 6 A. 8, 9, 10 here, yes. And whatever this 7 is. 8 MS. CITERA: I don't think 9 is. 9 THE WITNESS: 9 is the "Safeguarding Trust." 10 MS. CITERA: Oh, okay. Sorry. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. With regard to those materials, and I 13 know you've testified there might be other 14 presentations or other compliance documents out 15 there, that this might not be the full universe of 16 compliance materials, but for what has been 17 produced today and what we've discussed and you've 18 identified at your deposition here today, for 19 Abbott's production as well as that document 20 produced by Ms. Renick, is it fair to say that for 21 whatever time period a presentation is made in or a 22 policy is published, that for that period of time,</p>	<p style="text-align: right;">Page 494</p> <p>1 given by an outside firm. I'm referring to 39 and 2 40, Tab 39 and 40 of Exhibit 1. 3 MS. ST. PETER-GRIFFITH: Okay. So we can 4 exclude them. For the Abbott-generated material. 5 BY THE WITNESS: 6 A. As a general rule, I'd say yes. The only 7 caveat I'd have to answer is knowing that many of 8 these presentations were prepared by individuals, 9 that an individual's perspective on a subject 10 matter may -- may have had a slight -- there was a 11 lot of interpretation of Safe Harbor regulations 12 and other areas that were not abundantly clear to 13 the world -- continue to not be abundantly clear -- 14 that there would have been some interpretation. So 15 I suspect there may even be some inconsistencies in 16 certain wording choices in other provisions. But 17 as a general rule, I'd say yes. 18 Q. Okay. Before we start looking at some of 19 the documents, some additional documents, sir, I'm 20 going to ask you, we've talked about today and a 21 little bit on your first day of deposition, the 22 Home Infusion business unit and its submission of</p>

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<p style="text-align: right;">Page 495</p> <p>1 claims to Medicare and Medicaid, right?</p> <p>2 A. Yes.</p> <p>3 Q. Setting aside what you've testified to</p> <p>4 about compliance concerning that -- their business</p> <p>5 practices with regard to the submission, I have a</p> <p>6 more general series of questions about the Home</p> <p>7 Infusion business model itself in terms of its --</p> <p>8 the -- whether or not it complies with federal and</p> <p>9 state Medicare and Medicaid fraud and abuse</p> <p>10 statutes. And I'd like to kind of go back to the</p> <p>11 inception of Home Infusion.</p> <p>12 Do you have an understanding as to what</p> <p>13 was done or what is Abbott's understanding as to</p> <p>14 what was done at the time that the Home Infusion</p> <p>15 department was created to evaluate what</p> <p>16 relationships with its customers were permissible</p> <p>17 or impermissible under federal and state Medicare</p> <p>18 and Medicaid fraud and abuse statutes?</p> <p>19 MS. CITERA: Object to the form, outside the</p> <p>20 scope. I'm just going to cause you not to reveal</p> <p>21 any privileged information.</p> <p>22 BY THE WITNESS:</p>	<p style="text-align: right;">Page 497</p> <p>1 Brian Taylor thought that he either directly or was</p> <p>2 aware of consultation with Hogan & Hartson</p> <p>3 regarding Home Infusion generally. I don't know</p> <p>4 that it's specifically about -- you've asked the</p> <p>5 question specifically about consignment.</p> <p>6 Q. Okay. Well, what generally was discussed</p> <p>7 with Gardner Carton or Hogan & Hartson?</p> <p>8 MS. CITERA: Object to the form. I'm going to</p> <p>9 instruct you not to answer that.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Any conversation with counsel would have</p> <p>12 been privileged.</p> <p>13 MS. ST. PETER-GRIFFITH: Do you intend to rely</p> <p>14 upon any advice of counsel defense?</p> <p>15 MS. CITERA: As I stated in the deposition on</p> <p>16 Wednesday, I'm not going to answer that question.</p> <p>17 MS. ST. PETER-GRIFFITH: Okay. Well, to the</p> <p>18 extent -- And we will get into it because this</p> <p>19 privilege was waived in some of the documents we're</p> <p>20 going to see. We'll have to revisit this. And to</p> <p>21 the extent that Abbott intends to rely upon an</p> <p>22 advice of counsel defense, this line of questioning</p>
<p style="text-align: right;">Page 496</p> <p>1 A. I don't have any. First, I can't -- I</p> <p>2 don't know when it was initiated historically to</p> <p>3 know whether -- what laws were in effect that it</p> <p>4 was initiated. So I can't answer that question.</p> <p>5 Q. Did Abbott obtain any opinions concerning</p> <p>6 whether or not the consignment arrangements and the</p> <p>7 consignment contracts that it entered into with its</p> <p>8 Home Infusion consignment partners complied with</p> <p>9 federal and state Medicare and Medicaid fraud and</p> <p>10 abuse statutes?</p> <p>11 MS. CITERA: Same objections and instruction.</p> <p>12 BY THE WITNESS:</p> <p>13 A. '91 to 2003?</p> <p>14 Q. Yes.</p> <p>15 A. I am aware that outside counsel was</p> <p>16 consulted regarding the subject matter.</p> <p>17 Q. And who was that outside counsel?</p> <p>18 A. Without -- not being absolutely certain,</p> <p>19 I have heard Gardner Carton.</p> <p>20 Q. Where have you heard that?</p> <p>21 A. Oh, was it Hogan? You know what, it may</p> <p>22 have been Hogan & Hartson. I take that back.</p>	<p style="text-align: right;">Page 498</p> <p>1 is completely inappropriate and we object to your</p> <p>2 instruction.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. What did you learn from Mr. Taylor about</p> <p>5 the nature of the issues that Gardner Carton was</p> <p>6 asked to address?</p> <p>7 MS. CITERA: I can give you the same</p> <p>8 instruction.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Conversation I had with Mr. Taylor</p> <p>11 pertained to whether he was aware that Abbott</p> <p>12 utilized outside counsel with respect to Home</p> <p>13 Infusion, and he said yes.</p> <p>14 Q. Okay. When was -- When did Abbott</p> <p>15 utilize Gardner, the Gardner firm, or Hogan &</p> <p>16 Hartson?</p> <p>17 A. I believe it would be Hogan & Hartson.</p> <p>18 Q. Before you testify to that, sir, I will</p> <p>19 tell you that we're going to look at opinions from</p> <p>20 Gardner, the Gardner firm, so --</p> <p>21 A. My knowledge, I had heard Gardner; but I</p> <p>22 didn't have direct information about that. The</p>

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<p>1 knowledge I gained through my direct conversation</p> <p>2 with Mr. Taylor was Hogan & Hartson.</p> <p>3 Q. Okay. So Mr. Taylor told you that he</p> <p>4 thought it was Hogan & Hartson?</p> <p>5 A. He thought it was Hogan & Hartson,</p> <p>6 correct.</p> <p>7 Q. Did he tell you who he consulted with, or</p> <p>8 who he thought they consulted at Hogan & Hartson?</p> <p>9 A. Oh, he did say a name. Does it matter?</p> <p>10 I think that's --</p> <p>11 MS. CITERA: You can reveal the name.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Liz, Liz Dunst. Liz -- that name, it</p> <p>14 might be someone I went to school with. A name</p> <p>15 popped into my head. I think Liz Dunst. You can</p> <p>16 check whether she was ever an attorney at Hogan &</p> <p>17 Hartson.</p> <p>18 Q. Okay. Other than Hogan & Hartson and</p> <p>19 possibly Gardner Carton, is there any other outside</p> <p>20 firm that Abbott consulted with concerning its Home</p> <p>21 Infusion business unit or the business model for</p> <p>22 it's Home Infusion business unit?</p>	<p>1 Q. Okay. What about Arnold & Porter?</p> <p>2 A. Talking about this the other day or</p> <p>3 previous that we couldn't think of the name. It</p> <p>4 was a big shot there.</p> <p>5 Q. Okay.</p> <p>6 A. If you ask them, that probably doesn't</p> <p>7 narrow the list very much but ... I don't recall.</p> <p>8 Q. Okay. Any other outside legal counsel</p> <p>9 that the legal department within Abbott may have</p> <p>10 consulted or that HPD -- Well, let me ask you,</p> <p>11 could anyone at HPD contact outside counsel without</p> <p>12 contacting the legal department?</p> <p>13 A. They should not have. They could clearly</p> <p>14 do it because they could pick up the phone and make</p> <p>15 a call, but that would not have been viewed very</p> <p>16 favorably.</p> <p>17 Q. Are you familiar with the Medicare</p> <p>18 Working Group?</p> <p>19 A. If my recollection is correct from this</p> <p>20 morning, it's referenced in this document, this</p> <p>21 compliance program from '99. But that's the first</p> <p>22 time I have heard that term used.</p>
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<p>1 A. Not to my knowledge about Home Infusion.</p> <p>2 As I stated Wednesday, we worked with Reed Smith in</p> <p>3 the time frame that I was actively involved in the</p> <p>4 practice on general compliance, healthcare</p> <p>5 compliance matters.</p> <p>6 Q. Actually, thank you for reminding me of</p> <p>7 that because I did have a follow-up question.</p> <p>8 Other than Reed Smith, was there any other law firm</p> <p>9 that Abbott HPD worked with on general compliance</p> <p>10 matters?</p> <p>11 A. It wouldn't have been HPD. It would have</p> <p>12 been the legal department.</p> <p>13 Q. Okay. Then the legal department.</p> <p>14 A. I testified Wednesday that Reed Smith,</p> <p>15 Mayer Brown, and Arnold & Porter.</p> <p>16 Q. And who did you work with at Reed Smith?</p> <p>17 A. Gordon Schatz and Joe Metro.</p> <p>18 Q. Who did you work with at Mayer Brown?</p> <p>19 And when I say "you," I mean Abbott.</p> <p>20 A. Abbott. It probably is not an exhaustive</p> <p>21 list. Rob Jenkins and Katherine Kusske, K U S S K</p> <p>22 E.</p>	<p>1 Q. Is Abbott aware of any lawyers who served</p> <p>2 on the Medicare Working Group?</p> <p>3 MS. CITERA: Object to the form, outside the</p> <p>4 scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I can't answer that because I wasn't --</p> <p>7 having not been aware of the existence of it, I</p> <p>8 don't know who the membership would have been.</p> <p>9 Q. Sir, what -- And I understand this might</p> <p>10 be in your personal capacity.</p> <p>11 A. Okay.</p> <p>12 Q. What was your understanding of the nature</p> <p>13 of the business model for Home Infusion?</p> <p>14 MS. CITERA: Object to the form, outside the</p> <p>15 scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Boy, that's a very broad question. What</p> <p>18 was -- I don't know how to even start to answer</p> <p>19 that question.</p> <p>20 Q. Okay. Well, what did you understand was</p> <p>21 the nature of how the Home Infusion business model</p> <p>22 operated in terms of its contracts with its</p>

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<p style="text-align: right;">Page 503</p> <p>1 customers?</p> <p>2 MS. CITERA: Object to the form, beyond the</p> <p>3 scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm aware of several different</p> <p>6 contractual structures that existed, both direct</p> <p>7 sales of products and services to -- to a customer</p> <p>8 where they would pay a contract price, say, some</p> <p>9 price had been negotiated between the parties for</p> <p>10 those products and/or services. And I'm aware of a</p> <p>11 revenue-sharing arrangement where Abbott provided</p> <p>12 -- and it probably came in all flavors of what</p> <p>13 services and which products were provided to any</p> <p>14 given customer; but it provided services and</p> <p>15 products to customers for a negotiated -- at the</p> <p>16 time of the contract, a negotiated percentage of</p> <p>17 revenue received by the customer.</p> <p>18 Q. Okay. And are those the only two models</p> <p>19 that you're familiar with?</p> <p>20 A. Yes.</p> <p>21 MS. CITERA: Same objections, instructions.</p> <p>22 Same objections, sorry.</p>	<p style="text-align: right;">Page 505</p> <p>1 MS. CITERA: Objection to form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. The scope, the breadth of the question,</p> <p>5 anything is possible. The practice was that</p> <p>6 contractual -- there were templates, contract</p> <p>7 templates that existed that, in all of the</p> <p>8 businesses, that the Contract Marketing would work</p> <p>9 with. And to the extent they were -- contracts</p> <p>10 were consistent with contract templates that had</p> <p>11 been reviewed and approved by legal in the past, we</p> <p>12 -- contracts could be entered into that we wouldn't</p> <p>13 know were entered into because they were consistent</p> <p>14 with templates that had been provided. Again, there</p> <p>15 were thousands of contracts that Contract Marketing</p> <p>16 -- not necessarily in Home Infusion, but --</p> <p>17 Q. Okay. I understand. And I want to</p> <p>18 differentiate. Right now I'd just like to talk</p> <p>19 about Home Infusion.</p> <p>20 A. Okay. Same answer regarding templates.</p> <p>21 Templates were provided -- I'm sorry, did you want</p> <p>22 to object?</p>
<p style="text-align: right;">Page 504</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, I'm trying to lay the foundation</p> <p>3 for the discussion of the -- you know, of</p> <p>4 compliance in this area.</p> <p>5 Did Abbott ever -- Did Abbott Home</p> <p>6 Infusion ever enter into any joint venture</p> <p>7 arrangements with its Home Infusion customers?</p> <p>8 MS. CITERA: Object to the form. Object to</p> <p>9 the scope, outside the scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I have seen documentation that referred</p> <p>12 to that term. I believe it's used by -- It's used</p> <p>13 by businesspeople in a non-legal way, and I'm not</p> <p>14 certain that the arrangements that it refers to</p> <p>15 necessarily qualify from a legal perspective as a</p> <p>16 joint venture.</p> <p>17 Q. Well, could the Home Infusion unit enter</p> <p>18 into a joint venture arrangement without the</p> <p>19 involvement of the legal department?</p> <p>20 A. Could.</p> <p>21 Q. It could? Should it have?</p> <p>22 A. I mean --</p>	<p style="text-align: right;">Page 506</p> <p>1 MS. CITERA: No.</p> <p>2 THE WITNESS: I talked over you previously.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Templates were provided to Home Infusion.</p> <p>5 It is conceivable that contracts were entered into</p> <p>6 that were consistent with those templates that</p> <p>7 would not have been reviewed by legal.</p> <p>8 Q. Okay.</p> <p>9 A. The expectation would be if the contracts</p> <p>10 deviated from those templates -- and I qualify</p> <p>11 that, meaningfully deviate -- if, you know, it was</p> <p>12 a choice of law provision, someone wanted New York</p> <p>13 and it said Illinois, that they wouldn't</p> <p>14 necessarily come to legal to resolve that</p> <p>15 difference. But business folks were -- understood</p> <p>16 that material deviations from the template needed</p> <p>17 to be reviewed by legal.</p> <p>18 Q. Is it Abbott's position that it could</p> <p>19 enter into joint venture arrangements -- and I'm</p> <p>20 just talking about joint venture arrangements right</p> <p>21 now. We're going to move on to the other types of</p> <p>22 business models. But is it Abbott's position that</p>

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<p style="text-align: right;">Page 507</p> <p>1 it could enter into joint venture arrangements with 2 its Home Infusion customers and still comply with 3 federal and state Medicare and Medicaid fraud and 4 abuse laws? 5 MS. CITERA: Object to the form, outside the 6 scope. 7 BY THE WITNESS: 8 A. I believe you're asking me for a legal 9 conclusion. 10 Q. No, I'm asking for Abbott's position. 11 A. But whether something was legal? 12 Q. No, I'm asking for Abbott's position 13 whether or not -- You've testified repeatedly 14 Abbott always complied with Medicare and Medicaid 15 fraud and abuse laws. 16 A. Right. 17 Q. If Abbott always complied with Medicare 18 and Medicaid fraud and abuse laws, if it entered 19 into joint venture arrangements, is it fair to say 20 that Abbott viewed joint venture arrangements 21 between Abbott's Home Infusion business unit and 22 those customers as being in compliance with federal</p>	<p style="text-align: right;">Page 509</p> <p>1 BY THE WITNESS: 2 A. As I understand the assumptions made in 3 the question, we're assuming that a joint venture 4 arrangement and a legal joint venture versus a 5 marketing description of a joint venture, assuming 6 that a legal joint venture would violate the fraud 7 and abuse statutes, it would not be Abbott's 8 practice to violate the statutes. 9 Q. Did anyone at Abbott ever do an 10 evaluation as to whether or not joint venture 11 arrangements that it entered into with its Home 12 Infusion clients were in compliance with federal 13 and state Medicare and Medicaid fraud and abuse 14 statutes? 15 MS. CITERA: Objection to the form. I also 16 caution you not to reveal any privileged 17 information. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. And I include -- I'm sorry. 20 MS. ST. PETER-GRIFFITH: Were you finished, 21 Toni. 22 MS. CITERA: Yeah.</p>
<p style="text-align: right;">Page 508</p> <p>1 and state Medicare and Medicaid fraud and abuse 2 laws? 3 MS. CITERA: Objection to the form, outside 4 the scope. 5 BY THE WITNESS: 6 A. I believe you're asking me to evaluate 7 whether a factual pattern, fact pattern of Abbott 8 entering into a contract with a customer that is 9 being described as a joint venture, whether that 10 structure violates the statute. And I believe 11 that's asking me to apply a fact pattern against a 12 set of laws and reach a legal conclusion whether 13 it's in compliance or not in compliance. 14 Q. Is it possible that a joint venture 15 arrangement between the -- Well, let me ask you, 16 would Abbott enter into a joint venture arrangement 17 with its Home Infusion customers or a Home Infusion 18 customer if such arrangement violated federal and 19 state Medicare and Medicaid fraud and abuse 20 statutes? 21 MS. CITERA: Object to the form. Object to 22 the scope, outside the scope.</p>	<p style="text-align: right;">Page 510</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. I include within that also the Stark 3 statutes as well. 4 MS. CITERA: Same objections. Are you done? 5 MS. ST. PETER-GRIFFITH: Yeah. I'm sorry. 6 MS. CITERA: Same objection, same instruction. 7 BY THE WITNESS: 8 A. I believe the -- your question again is 9 assuming a legal conclusion that arrangements that 10 Abbott entered into were, in fact, joint -- legal 11 joint ventures -- 12 Q. Okay. 13 A. -- to the extent -- I am aware that the 14 subject matter was reviewed in the context of a 15 particular customer in relationship to a tax 16 matter. And in reviewing the letter, it strikes me 17 that an analysis would likely have been made to 18 reach the conclusions that are reached in the 19 letter. 20 Q. Okay. What letter are you talking about? 21 A. Ingalls. 22 Q. Okay.</p>

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<p>1 A. I don't know the -- There was a letter 2 involving that customer. I don't remember the time 3 line, mid '90s. 4 Q. When did you review this letter? 5 A. I reviewed this before my testimony on 6 Wednesday. 7 Q. Are there any other documents that you 8 reviewed in preparation for your testimony that we 9 haven't talked about? 10 A. I reviewed a letter from a customer to 11 Abbott and a response from Abbott to that customer 12 that may have been a follow-up from the -- I don't 13 remember if there was a third letter in that 14 series. 15 Q. Who was the customer? 16 A. Ingalls. 17 Q. Okay. So all these documents pertain to 18 Ingalls? 19 A. All these documents, right, pertain to 20 that issue raised by Ingalls. 21 Q. Well, so Ingalls raised an issue about -- 22 a legal issue, about the relationship with -- about</p>	<p>1 status. 2 Q. 501(c)(3)? 3 A. 501(c)(3). 4 Q. Okay. 5 A. Which -- however the numbers go. 6 Q. With regard -- Are you aware of any other 7 evaluation of whether or not the Home Infusion 8 arrangements that were joint venture arrangements 9 were in compliance with federal and state Medicare 10 and Medicaid fraud and abuse statutes? 11 MS. CITERA: I'm sorry. Could you re-read 12 that question? 13 (Record read as requested.) 14 MS. CITERA: Objection to the form, outside 15 the scope. I'm going to caution you not to reveal 16 any privileged communications. 17 BY THE WITNESS: 18 A. Again, I think your question is assuming 19 that the relationships were, in fact, joint 20 ventures. You're stating a legal conclusion in 21 your question, so I ... 22 Q. Well, sir, I'll represent to you that</p>
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<p>1 its contractual relationship with Abbott? 2 A. Its concern about a legal issue that they 3 understood to exist. 4 Q. And it was your understanding that that 5 pertained only to a tax matter? 6 A. The predicate -- The underlying concern 7 that they had was the -- as I -- and my 8 recollection of the content of that letter was they 9 were concerned that -- that the 501(c)(3) tax 10 exempt laws were -- had changed, the regulations 11 had changed. There was some interpretation. I 12 don't remember what happened or they became aware 13 of -- I don't know, something with regard to that 14 tax scheme that suggested that joint ventures that 15 a 501(c)(3), not-for-profit corporation entered 16 into, to the extent that they had entered into a 17 joint venture and there was a failure to comply 18 with law, broad, general -- to my knowledge, it did 19 not -- I did not read the tax issue, the tax laws 20 that were supporting this position, that failure to 21 comply with laws in that joint venture could cause 22 the not-for-profit to lose its 503 -- 501(c)(3)</p>	<p>1 there are clearly documents that Abbott has 2 produced that state that they are joint venture 3 arrangements. Is it your testimony that Abbott 4 never -- Abbott's Home Infusion department never 5 entered into a legal joint venture with one of its 6 customers? 7 MS. CITERA: Objection to the form, outside 8 the scope. 9 BY THE WITNESS: 10 A. I can't say that they never did. But 11 you're stating they did, and that's a different -- 12 those are different conclusions. 13 Q. Well, if on the face of the document it 14 says this arrangement is a joint venture 15 arrangement -- 16 A. Which document would that -- 17 MS. CITERA: Well, is there a question? 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Well, yeah. I'm representing to you that 20 Abbott has produced and we have volumes of 21 different varying contracts to various contracts 22 from Home Infusion, some of which say that they are</p>

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<p style="text-align: right;">Page 515</p> <p>1 joint venture arrangements. 2 MS. CITERA: Object to the form, outside the 3 scope. 4 BY THE WITNESS: 5 A. Okay. I have not reviewed those 6 contracts. If there was a -- if there was a 7 contract on its face that described the 8 relationship between a customer and Abbott as a 9 joint venture, I would -- I can't state today that 10 that would not be accurate. 11 Q. Let's talk about the -- Well, what was 12 done to evaluate, if anything at all at Abbott, 13 what was done to evaluate whether joint venture 14 arrangements between Home Infusion and Home 15 Infusion's customers were in compliance with 16 federal and state Medicare and Medicaid fraud and 17 abuse statutes? 18 MS. CITERA: Objection to the form. I caution 19 you not to reveal any privileged communications. 20 BY THE WITNESS: 21 A. Other than the communication with Hogan & 22 Hartson on the Ingalls matter or whichever outside</p>	<p style="text-align: right;">Page 517</p> <p>1 were and what the advice was, Abbott responded to 2 the letter from Ingalls with a response that 3 challenged its conclusions. 4 Q. Challenged whose conclusions? 5 A. Ingalls' conclusions. 6 Q. What was the ultimate result of that 7 series of communications with Ingalls? 8 MS. CITERA: Same objections and instruction. 9 BY THE WITNESS: 10 A. The last -- There must have been a third 11 communication because the last communication I 12 recall seeing was a letter from Ingalls terminating 13 the contract. 14 Q. Did that particular exchange with Ingalls 15 raise any concerns within Abbott that maybe it 16 should evaluate its Home Infusion operation to see 17 whether or not it may violate federal and state 18 Medicare and Medicaid fraud and abuse statutes? 19 MS. CITERA: Objection to the form, outside 20 the scope. And I caution you not to reveal any 21 privileged communications or analysis. 22 BY THE WITNESS:</p>
<p style="text-align: right;">Page 516</p> <p>1 counsel ended up providing legal counsel on that 2 matter, I'm not aware specifically of any 3 evaluation that was made to determine whether a 4 joint venture -- whether the relationships were 5 joint ventures and whether a joint venture would 6 violate healthcare compliance statutes. 7 Q. Did Abbott act upon the advice of its 8 counsel? 9 MS. CITERA: Objection to the form. You're 10 asking for a legal conclusion here. 11 MS. ST. PETER-GRIFFITH: No. I'm -- Let me 12 rephrase the question then. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. After Hogan & Hartson or whichever law 15 firm it was that provided the legal advice provided 16 legal advice to Abbott, what did it do with regard 17 to its arrangement or contractual relationship with 18 Ingalls? 19 MS. CITERA: Object to the form, outside the 20 same. Same caution with regard to the privilege. 21 BY THE WITNESS: 22 A. Without disclosing what the conversations</p>	<p style="text-align: right;">Page 518</p> <p>1 A. As I stated, I believe as I've been 2 advised through conversations, that we did consult 3 outside counsel as a result or in -- or directly as 4 a result and in real time to the issue being raised 5 by Ingalls. The subject matters of those 6 conversations and any advice or opinions given 7 during those conversations would be privileged. 8 Q. Okay. But my question is, after Ingalls 9 terminated the contract, did Abbott say, "Hey, we 10 need to evaluate whether or not our -- these 11 arrangements that we have are in compliance with 12 federal and state Medicare and Medicaid fraud and 13 abuse statutes"? 14 MS. CITERA: Same objections, same 15 instruction. 16 BY THE WITNESS: 17 A. I don't know that -- having a -- 18 responded to Ingalls assertions stating that we did 19 not agree with their legal conclusions, the fact 20 that Ingalls was concerned, I don't know that it -- 21 and for whatever reasons it was concerned, stated 22 or otherwise, to cause it to terminate the</p>

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<p>1 contract, that we took further action or further 2 evaluation after their response terminating. 3 Q. Well, did -- Let me ask you this: What 4 is your understanding of Abbott's revenue-share 5 arrangements? 6 MS. CITERA: Object to the form, outside the 7 scope. 8 BY THE WITNESS: 9 A. In Home Infusion? 10 Q. In Home Infusion, yeah. All these 11 questions pertain to Home Infusion. 12 MS. CITERA: Same objections. 13 BY THE WITNESS: 14 A. I believe I testified to this last 15 Wednesday. My understanding of the revenue-share 16 structure was that Abbott would provide products 17 and/or services to a customer and, in compensation 18 for those products and/or services, Abbott would be 19 compensated a pre-negotiated percentage, varying 20 percentages, as I recall, depending on what the 21 therapies were involved, the percentage of revenue 22 collected by the customer.</p>	<p>1 A. I have no direct knowledge that any -- 2 any activity did or did not occur. I don't know 3 that they didn't, but I don't know that they did. 4 Q. What did you do to review materials 5 reasonably available to Abbott to make that inquiry 6 in preparation for your testimony here today? 7 A. I had conversations with Mike Sellers and 8 Ginnie Tobiason and Brian Taylor more broadly about 9 Home Infusion business. I did not ask that 10 particular -- I did not ask a question along the 11 lines you're asking that would have elicited a 12 response. 13 Q. Why didn't you investigate that? 14 MS. CITERA: Object to the form. 15 BY THE WITNESS: 16 A. No, I don't have an answer to that. 17 Q. What did Abbott -- With regard to its 18 revenue-share -- I'm getting away from joint 19 venture arrangements, possible joint venture 20 arrangements. With regard to its revenue-share 21 arrangements -- First, let me ask you, are the 22 revenue-share arrangements distinguishable from the</p>
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<p>1 Q. When Abbott provided the services to its 2 revenue-share customers, how did it identify the 3 fair market value for each service provided with 4 regard to each patient? 5 MS. CITERA: Objection. 6 BY THE WITNESS: 7 A. I don't know the answer -- 8 MS. CITERA: Objection to form. 9 BY THE WITNESS: 10 A. I'm sorry. Sorry, sorry. I don't know 11 the answer. Were you done? 12 MS. CITERA: Go ahead. 13 BY THE WITNESS: 14 A. Yes, I don't know the answer to that. 15 Q. Well, did Abbott undertake any 16 methodology for identifying the fair market value 17 of the individual services provided pursuant to the 18 revenue-share contracts? 19 MS. CITERA: Objection to the form, outside 20 the scope. I also caution you not to reveal any 21 privileged communications or analysis. 22 BY THE WITNESS:</p>	<p>1 direct sales because Abbott consigns the products 2 under the revenue-share arrangements as opposed to 3 just charging a price and selling them under the 4 direct sales arrangements? 5 MS. CITERA: Object to the form, outside the 6 scope. 7 BY THE WITNESS: 8 A. Without getting into specific contracts, 9 generally I'd say that would be one distinction. 10 Q. Are there any other distinctions between 11 the direct sale arrangements and the revenue-share 12 arrangements? 13 MS. CITERA: Same objections. 14 BY THE WITNESS: 15 A. There could be in terms of payment 16 timing. There could be in terms of documentation 17 produced, in terms of -- if there was audit rights. 18 You know, there's any number of provisions that 19 could be different. 20 Q. Okay. Well, under the direct sales 21 arrangements, would Abbott identify a price for its 22 product?</p>

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Page 523	Page 525
<p>1 A. Presumably --</p> <p>2 MS. CITERA: Objection to form, outside the</p> <p>3 scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Presumably, yes.</p> <p>6 Q. Under the revenue-share arrangements,</p> <p>7 would Abbott contractually identify a price that it</p> <p>8 was charging for the products that it was</p> <p>9 consigning to the revenue-share contracts, other</p> <p>10 than the percentage of collections?</p> <p>11 MS. CITERA: Same objections.</p> <p>12 BY THE WITNESS:</p> <p>13 A. To my understanding, there would -- there</p> <p>14 would not be a specific -- I don't know whether</p> <p>15 percentages, whether this was back-up data provided</p> <p>16 with an agreed-upon percentage that demonstrated</p> <p>17 how you got to that percentage. But the payment,</p> <p>18 to my knowledge of revenue share, would have</p> <p>19 reflected a percentage of revenue collected by the</p> <p>20 customer and not a -- necessarily a direct cost of</p> <p>21 -- it wouldn't have been -- wouldn't have been</p> <p>22 recited in terms of direct cost of the product.</p>	<p>1 Q. They're called partners, that's why. And</p> <p>2 that's what --</p> <p>3 A. Other businesspeople --</p> <p>4 Q. That's not my term.</p> <p>5 A. Those are businesspeople talking in</p> <p>6 marketing terms.</p> <p>7 Q. Okay. In terms of its consignment</p> <p>8 partners, Abbott would provide product at its cost</p> <p>9 to the partners; that's the first step, right?</p> <p>10 MS. CITERA: Object to the form, outside the</p> <p>11 scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. As I understand it, they would provide --</p> <p>14 they would provide product to these customers on a</p> <p>15 consignment basis, yes.</p> <p>16 Q. How would Abbott track the fair market</p> <p>17 value of the individual product provided to the</p> <p>18 consignment partners and communicate that</p> <p>19 information to the consignment partners, if at all?</p> <p>20 MS. CITERA: Objection to the form, outside</p> <p>21 the scope.</p> <p>22 BY THE WITNESS:</p>
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<p>1 Q. Okay. And in terms of how the revenue</p> <p>2 consignments worked, Abbott would provide at its</p> <p>3 cost product to the revenue-share partner, right?</p> <p>4 MS. CITERA: Objection to the form, outside</p> <p>5 the scope.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. It would deliver product to the</p> <p>8 revenue-share partner?</p> <p>9 A. You said revenue consignment. You mean</p> <p>10 product consignment?</p> <p>11 Q. I'm sorry. Product consignment, yes.</p> <p>12 MS. CITERA: Same objections.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. It would, you know --</p> <p>15 A. Revenue consignment would be a bank.</p> <p>16 Q. Abbott to its revenue-share partners or</p> <p>17 can we call them consignment partners? Other</p> <p>18 witnesses have. Is that fair?</p> <p>19 A. That's fine.</p> <p>20 Q. For its consignment partners, as I</p> <p>21 understand the --</p> <p>22 A. When you say customers, is that partners?</p>	<p>1 A. I do not know whether they communicated a</p> <p>2 fair market value to the customers on a</p> <p>3 product-by-product, service-by-service basis. The</p> <p>4 contract -- Again, I don't know whether the</p> <p>5 contract, when there was the percentage agreed to</p> <p>6 between the parties would have reflected back-up</p> <p>7 information, pricing, and other information that</p> <p>8 demonstrates why the percentage is what it is. In</p> <p>9 terms of identifying how would they know what fair</p> <p>10 market value is, my opinion is that if you're in</p> <p>11 the market selling these products and it's your</p> <p>12 business, that someone in that business has an</p> <p>13 appreciation of fair market value.</p> <p>14 Q. Well, did the contractual -- did the</p> <p>15 contracts, did the revenue-share contracts in any</p> <p>16 way establish a fair market value price for the</p> <p>17 individual product given to the consignment</p> <p>18 partners on a consignment basis?</p> <p>19 MS. CITERA: Objection to the form, outside</p> <p>20 the scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Again, I'm -- All my testimony is about</p>

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<p>1 my understanding of the structure. It is not about 2 a given contract. So this question seems to be 3 more specific about the contracts, and I can't 4 answer that. I don't know.</p> <p>5 Q. Abbott under its consignment 6 partnerships, for its revenue, would only collect a 7 percentage of revenue that was collected from the 8 consignment partner, right?</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Collected by the consignment party from 12 third-party payors; is that fair?</p> <p>13 MS. CITERA: Objection to the form, outside 14 the scope.</p> <p>15 BY THE WITNESS:</p> <p>16 A. My understanding is that -- I object to 17 the term. So the consignment customer would pay -- 18 would be obligated to pay Abbott a pre-negotiated 19 overall percentage of revenue collected by that 20 customer.</p> <p>21 Q. And when you say "overall percentage," do 22 you mean that it would not be on a</p>	<p>1 partner, up to that point in time, Abbott would 2 provide under the revenue share agreements its 3 product basically for free, meaning the 4 revenue-share partner would not have to pay for it 5 until such time as the revenue was collected; is 6 that fair?</p> <p>7 MS. CITERA: Objection to the form, outside the 8 scope.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I would not describe it as a "provided 11 for free." It was provided with an accrued 12 obligation.</p> <p>13 Q. Okay. But until that obligation accrued 14 and the reimbursement was made and Abbott collected 15 a percentage of that reimbursement, they -- the 16 consignment partner would not have any obligation 17 to pay for the product that it was -- that was 18 consigned to it; is that fair?</p> <p>19 MS. CITERA: Objection to the form, outside 20 the scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. My understanding of the hypothetical fact</p>
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<p>1 patient-by-patient basis; it would just be 2 collections based on particular therapies?</p> <p>3 MS. CITERA: Objection to the form, outside the 4 scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. That is my understanding, that it was -- 7 the percentage of revenue share was -- may have 8 been differentiated on a therapies basis.</p> <p>9 Q. How did Abbott track and communicate the 10 fair market value that it charged for that 11 consigned product on an individual patient basis, 12 if at all?</p> <p>13 MS. CITERA: Objection to the form, outside 14 the scope.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I don't know whether the contracts 17 reflected individual pricing calculations that 18 would have been back-up in support of a 19 revenue-share percentage.</p> <p>20 Q. Okay. If Abbott -- or until the point in 21 time that Abbott receives a collection back from 22 the -- or a percentage back from the revenue-share</p>	<p>1 pattern that you described is that that product 2 would still be sitting in somebody's warehouse not 3 having been used yet, so there would be no 4 obligation to pay for it.</p> <p>5 Q. Okay. What about at the point in time 6 that it is utilized by the revenue-share partner 7 for therapies provided to clients? Let's say, you 8 know, you've got ten bags of saline solution; you 9 use them with a particular patient. At what point 10 in time does the consignment partner pay the price 11 that Abbott is charging for those particular bags 12 of saline, for example?</p> <p>13 MS. CITERA: Objection to the form. I think this 14 whole line of questioning is asking for him to do a 15 legal analysis. I'm also objecting it's outside 16 the scope.</p> <p>17 MS. ST. PETER-GRIFFITH: I'm just asking when 18 Abbott is providing -- I'm sorry. Were you done 19 with your objection?</p> <p>20 MS. CITERA: Yeah. You got it all, right?</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. I'm just asking at what point in the</p>

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<p>1 consignment relationship does Abbott, if at all, 2 does Abbott charge for the individual product 3 dispensed to the revenue-share's partner's clients. 4 MS. CITERA: Same objections. 5 BY THE WITNESS: 6 A. Could you -- I'm sorry. Could you repeat 7 that question? 8 (Record read as requested.) 9 MS. CITERA: Same objections. 10 BY THE WITNESS: 11 A. If I'm hearing your question correctly, 12 Abbott would not charge the end user of the 13 product. 14 Q. Okay. When Abbott -- When the 15 consignment partner utilizes Abbott product for 16 providing therapies to its patients, at that point 17 in time -- so they go in, they provide the therapy, 18 the saline is used -- at that point in time has -- 19 does the revenue-share partner pay for the product? 20 MS. CITERA: Objection to the form, outside 21 the scope. 22 BY THE WITNESS:</p>	<p>1 revenue-share contract for a particular patient for 2 particular therapy and the third-party payor, 3 whether it be Medicare, Medicaid -- well, let's say 4 it's a Medicaid patient, okay, and Medicaid does 5 not pay for the product, meaning they reject the 6 claim, what is the price charged, if there is a 7 price charged? What is the price charged for that 8 product that is used by that patient if 9 reimbursement is denied? 10 MS. CITERA: Object to the form, outside the 11 scope. I mean, I just want to get on the record 12 that he is not here to testify about the Home 13 Infusion business and business practices or to 14 interpret the agreements. 15 BY THE WITNESS: 16 A. Especially since I have not seen the 17 agreements. Again, I think the answer to that 18 question could vary depending on the individual 19 contract provided. 20 Q. Well, isn't the risk that Abbott helps 21 bear in these revenue-share agreements the risk of 22 nonpayment so Abbott will provide -- will say,</p>
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<p>1 A. And without -- Any number of the 2 contracts could be different. Without having read 3 the contracts, my understanding of the -- of the 4 structure is that Abbott would not be paid upon the 5 use; it would be paid upon the collection. 6 Q. That's my question. Now, is it paid upon 7 the individual -- the collection from individual 8 patients once -- from -- once their third-party 9 payors -- or is it just in the aggregate, the total 10 collections received by the revenue-share partners? 11 MS. CITERA: Object to the form, outside the 12 scope. 13 BY THE WITNESS: 14 A. I'm going to have to speculate on that, 15 because that's -- I have no recollection of how the 16 contract provided, from a timing mechanism, whether 17 it was on a quarterly basis of all revenues 18 collected, whether it was monthly. I don't know 19 the answer to that specifically. 20 Q. Okay. Well, let me ask it a different 21 way: If the reimbursement department on behalf of 22 Abbott Home Infusion submits a bill for its</p>	<p>1 "We're not going to charge you for those patients 2 for whom you don't receive reimbursement for 3 whatever reason"? 4 MS. CITERA: Same objections. 5 BY THE WITNESS: 6 A. I'm recalling testimony from somebody's 7 deposition, it may have been Mike Sellers', that in 8 that scenario, nobody has paid for anything. 9 Q. Okay. 10 A. The reimbursement -- Medicare, in your 11 example Medicare has not paid, they denied 12 coverage. So they did not pay for the product that 13 they, Medicare/Medicaid recipient used. 14 Q. Okay. And the -- 15 MS. CITERA: Were you done with your answer? 16 THE WITNESS: Nodding. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. And would then Abbott sort of -- Would 19 Abbott have to then eat the cost of the product 20 that it provided for that patient? 21 MS. CITERA: Same objections. 22 BY THE WITNESS:</p>

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<p>1 A. Based on my recollection of the testimony 2 that I'm recalling, in that fact pattern, if there 3 was no reimbursement -- if reimbursement was 4 denied, there would be no revenue to share; so 5 Abbott would be out the cost of that product. 6 Q. Okay. 7 MS. ST. PETER-GRIFFITH: Is now a good time to 8 break for lunch? 9 MS. CITERA: Sure. I'm hungry. 10 THE VIDEOGRAPHER: Going off the record at 11 12:07 p.m. 12 (A lunch break was had.) 13 THE VIDEOGRAPHER: Beginning Videotape No. 4 14 in the deposition of Mr. Fishman. We're back on 15 the record at 12:59 p.m. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Welcome back, Mr. Fishman. 18 A. Thank you. 19 Q. What I'd like to do is you've already 20 segregated out the compliance program, a component 21 part of what I believe is Exhibit -- is it 9 or 8? 22 A. You know, I don't know which pile it came</p>	<p>1 Q. There are no Bates numbers on that. It's 2 just the Bates numbers on the disk. 3 A. And then Exhibit 10 is 0397104, 0398285. 4 Q. Okay. If you could take the compliance, 5 what you've got in your hand -- There you go. Sir, 6 have you had an opportunity to read this document? 7 A. I read it this morning briefly before our 8 -- my deposition started. 9 Q. Okay. What I'd like to do is ask you a 10 few questions about some of the representations in 11 here? 12 A. Okay. 13 Q. With an understanding that none of us in 14 this room may be familiar with this document. If 15 you could turn to the introduction page where it 16 says, "Compliance Program," I believe it's the 17 third page. 18 A. Yes. Page 1. 19 Q. Says Page 1 at the bottom? 20 A. Yes. 21 Q. Sir, if you could flip to, flip to -- if 22 you could refer to the second paragraph?</p>
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<p>1 from honestly. 2 Q. I think it came from that pile. 3 A. This would be 10 if it came from this 4 pile. 5 Q. Yeah. 6 MS. CITERA: Did you, Ann, get on the record 7 the Bates numbers, just so we -- 8 MS. ST. PETER-GRIFFITH: Sure. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. You know, why don't we do that, sir. 11 A. I think I did. But it's 0 -- this is the 12 Abbott Laboratories Inc., Home Infusions Services, 13 Reimbursement Operations. 14 Q. That one you did. I'm talking about the 15 general Bates ranges of each of these packages. 16 A. Oh, I'm sorry. 17 Q. I think Ms. Citera is right. I don't 18 think we did that before. 19 A. Okay. Exhibit 8 would be 0395435 through 20 0395586. 21 Q. Okay. 22 A. Exhibit 9 would be --</p>	<p>1 A. The relationship? 2 Q. The relationship, yes. It says it's 3 deeper than merely providing a billing service. Do 4 you see that? 5 A. I do. 6 Q. There's a sentence in the middle of that 7 paragraph that begins, "It is essential that Home 8 Infusion Services staff operate in strict 9 compliance with all federal and state laws, 10 regulations, and guidelines to obtain the maximum 11 legally allowable reimbursement for their clients." 12 Do you see that? 13 A. I do. 14 Q. What does that mean? 15 MS. CITERA: Objection to the form, outside 16 the scope. 17 BY THE WITNESS: 18 A. Reading -- Reading the words and taking 19 them at their face value, it's -- it says that Home 20 Infusion Services is to operate in strict 21 compliance with laws and that we should work to 22 provide clients with the most reimbursement that</p>

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<p style="text-align: right;">Page 539</p> <p>1 they can without violating laws.</p> <p>2 Q. Okay. How did the Home Infusion</p> <p>3 reimbursement department do that?</p> <p>4 MS. CITERA: Objection to the form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't know.</p> <p>7 Q. Other than what you've testified to</p> <p>8 earlier today, because I know that we touched upon</p> <p>9 this topic, are you aware of any particular -- or</p> <p>10 is Abbott aware of any particular procedures or</p> <p>11 programs that Abbott Home Infusion reimbursement</p> <p>12 implemented to ensure that in submitting claims to</p> <p>13 Medicare and Medicaid, its reimbursement department</p> <p>14 was acting in full compliance with federal and</p> <p>15 state Medicare and Medicaid fraud and abuse laws?</p> <p>16 MS. CITERA: Objection to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I have nothing to add to my prior</p> <p>19 testimony.</p> <p>20 Q. If Abbott's Home Infusion reimbursement</p> <p>21 department submitted claims to Medicare and</p> <p>22 Medicaid based on inflated AWP -- when I say</p>	<p style="text-align: right;">Page 541</p> <p>1 required for strict compliance as set forth in this</p> <p>2 document?</p> <p>3 MS. CITERA: Same objections.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I believe the basis of your question is</p> <p>6 for me to conclude -- would be for me to conclude</p> <p>7 -- make a legal conclusion that providing AWP</p> <p>8 prices in a reimbursement claim would not be in</p> <p>9 strict compliance with the federal laws, and that's</p> <p>10 a legal conclusion.</p> <p>11 Q. Well, my question is how -- Well, how</p> <p>12 does Abbott know it was following the laws if it</p> <p>13 submitted reimbursement claims based upon inflated</p> <p>14 AWP's?</p> <p>15 MS. CITERA: Objection to the form, outside</p> <p>16 the scope.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Same answer as I've given before in terms</p> <p>19 of how they -- how they work to adhere to be in</p> <p>20 compliance with laws.</p> <p>21 Q. If Abbott did not disclose on the claim</p> <p>22 reimbursement forms that it stated to Medicare and</p>
<p style="text-align: right;">Page 540</p> <p>1 "inflated," I mean AWP's that exceed the -- that</p> <p>2 exceed the contract price for the product by 50 to</p> <p>3 a thousand percent -- would that be in compliance</p> <p>4 with federal and state Medicare and Medicaid fraud</p> <p>5 and abuse statutes?</p> <p>6 MS. CITERA: Objection to the form, outside</p> <p>7 the scope.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I believe the form of your question asks</p> <p>10 me to reach a legal conclusion, which is to apply a</p> <p>11 set of facts about how we go about doing</p> <p>12 reimbursement and what the content of the claim is</p> <p>13 and then apply it against the laws, healthcare</p> <p>14 compliance laws and reach a conclusion about being</p> <p>15 in compliance.</p> <p>16 Q. Well, I mean it says -- This document</p> <p>17 says that Home Infusion is supposed to operate in</p> <p>18 strict compliance.</p> <p>19 A. Correct.</p> <p>20 Q. And my question is, if it submits claims</p> <p>21 to Medicare and Medicaid based upon an inflated AWP</p> <p>22 spread, how is that consistent with what is</p>	<p style="text-align: right;">Page 542</p> <p>1 Medicaid that the product it was providing to its</p> <p>2 Home Infusion revenue-share customers was on a</p> <p>3 consignment basis, did Abbott have a concern about</p> <p>4 compliance?</p> <p>5 MS. CITERA: Objection to the form, outside</p> <p>6 the scope.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Abbott -- Abbott always had a concern</p> <p>9 about being in compliance, and it sought to be in</p> <p>10 compliance. I think that was the question you</p> <p>11 asked, so yeah. They would be -- They would be</p> <p>12 concerned and would want to be in compliance with</p> <p>13 laws generally.</p> <p>14 Q. Would they -- In Abbott's view, is it</p> <p>15 acceptable and within its compliance requirements,</p> <p>16 it's own internal compliance standards and</p> <p>17 requirements, that all federal and state laws be</p> <p>18 adhered to if Abbott failed to disclose on claims</p> <p>19 it submitted to Medicare and Medicaid that product</p> <p>20 for which it was billing was provided to the Home</p> <p>21 Infusion revenue-share client on a consignment</p> <p>22 basis?</p>

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<p>1 MS. CITERA: Objection to the form, outside 2 the scope. 3 BY THE WITNESS: 4 A. I believe the question you're asking me 5 requires me to reach a legal conclusion as to 6 whether the contractual structure of -- that you're 7 referring to would be in compliance with healthcare 8 compliance laws. 9 Q. That's not the question that I'm asking. 10 I'm not asking about the contractual arrangement. 11 I'm asking about the claim submission. 12 In order to adhere to what is identified 13 here as the strict compliance requirement, should 14 Abbott's Home Infusion department disclose on the 15 Medicare and Medicaid reimbursement claim forms 16 that it is providing product to its customer on a 17 consignment basis? 18 MS. CITERA: Objection to the form, outside 19 the scope. 20 BY THE WITNESS: 21 A. I hear that question as asking me to 22 determine if Abbott should do something to be in</p>	<p>1 that. 2 Did Abbott have any concerns about not 3 disclosing the consignment relationships on the 4 Medicare and Medicaid claim forms? 5 MS. CITERA: Same objections. 6 BY THE WITNESS: 7 A. I don't know. 8 Q. Who would know? 9 MS. CITERA: Same objections. 10 BY THE WITNESS: 11 A. It would be the departments that were 12 involved in preparing and submitting that 13 information. 14 Q. Would that be the reimbursement 15 department within Home Infusion? 16 MS. CITERA: Same objections. 17 BY THE WITNESS: 18 A. Without -- Presumably, yes. I don't know 19 exactly how they operated and their organizational 20 structure. But that seems the likely place for it 21 to have occurred. 22 Q. Did Abbott ever evaluate whether it</p>
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<p>1 compliance with the law is a legal conclusion. And 2 if they should do it, they would be or wouldn't be. 3 And if they didn't do it they would or wouldn't be 4 is a legal conclusion. 5 Q. But Abbott's own -- I'm talking about 6 complying with this particular policy that's laid 7 out here within Abbott. 8 A. But the predicate -- 9 MS. CITERA: Same objections. 10 BY THE WITNESS: 11 A. Sorry. The predicate to the compliance 12 program is being in compliance with the laws. And 13 to be outside the compliance program, you have to 14 conclude that you're not in compliance with the 15 law. And the question you're asking me essentially 16 is, was Abbott in compliance with the law in this 17 particular practice. And I have the same answer to 18 that, which is that is a legal conclusion which I'm 19 not prepared to address. 20 Q. Well, did Abbott have any doubts that by 21 failing to disclose -- did Abbott have any doubts 22 about whether, if it failed to disclose -- Strike</p>	<p>1 should have, pursuant to Medicare and Medicaid 2 fraud and abuse laws, disclosed the consignment 3 relationships or the provision of product on 4 consignment on its Medicare and Medicaid claim 5 forms that it submitted for its clients? 6 MS. CITERA: Objection to the form, outside 7 the scope. And I'd also caution you not to reveal 8 any privileged communications or analysis. 9 BY THE WITNESS: 10 A. As I testified previously, Abbott did 11 seek counsel, external counsel's advice on the 12 subject matter of the Home Infusion business to -- 13 I'm not prepared to discuss the subject matter of 14 those discussions. 15 Q. Other than those legal discussions that 16 you're talking about, were there any other 17 discussions? 18 A. I'm sorry. Other discussions regarding? 19 Q. Regarding the -- whether or not Abbott's 20 Home Infusion reimbursement department should 21 disclose on claim forms submitted on behalf of 22 clients that the clients received product on</p>

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<p>1 consignment.</p> <p>2 MS. CITERA: Same objections and instruction.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Seemed like a very broad question. Can</p> <p>5 you repeat the question?</p> <p>6 (Record read as requested.)</p> <p>7 MS. CITERA: Same objections, obviously.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Specifically I don't know. It strikes me</p> <p>10 that the letters that we referred to previously</p> <p>11 where Ingalls raised the general subject matter,</p> <p>12 this may be part of that general subject matter.</p> <p>13 So the businesspeople would have been aware of it</p> <p>14 since a letter went into the business; so they may</p> <p>15 have had discussions -- likely had discussions or</p> <p>16 they called legal right away. I don't know.</p> <p>17 Q. Did any other clients raise questions</p> <p>18 about the legalities or compliance with Medicare</p> <p>19 and Medicaid fraud and abuse laws -- Strike that.</p> <p>20 Did any other clients or customers raise</p> <p>21 any concerns about whether the revenue-share</p> <p>22 arrangements or consignment arrangements were in</p>	<p>1 did an audit of Abbott Home Infusion and it came</p> <p>2 out clean.</p> <p>3 Q. Did she say what state?</p> <p>4 A. I don't know that she said. I don't know</p> <p>5 that she recalled.</p> <p>6 Q. Do you see the sentence that begins, "In</p> <p>7 addition the reimbursement department performs" --</p> <p>8 A. Yes.</p> <p>9 Q. -- "quarterly audits that focus on</p> <p>10 compliance with all federal and state laws and</p> <p>11 regulations." What compliance initiative is</p> <p>12 described there?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Again, having just received this and not</p> <p>16 having done any diligence regarding this document,</p> <p>17 reading the words that are printed, that they</p> <p>18 performed and that they would have -- the program</p> <p>19 recites they perform quarterly audits to determine</p> <p>20 they properly coded -- they prepared documentation</p> <p>21 properly.</p> <p>22 Q. Do you know what was involved in terms of</p>
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<p>1 compliance with federal and state Medicare and</p> <p>2 Medicaid fraud and abuse laws?</p> <p>3 MS. CITERA: Objection to the form, outside</p> <p>4 the scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. If you could go to the second-to-last</p> <p>8 page of this document --</p> <p>9 A. Page 7?</p> <p>10 Q. Yes, I'm sorry, Page 7 at the bottom. Do</p> <p>11 you see where it says, "Auditing and monitoring"?</p> <p>12 A. Yes.</p> <p>13 Q. The one, two, three, four -- Well, first</p> <p>14 of all, are you familiar with -- or are you</p> <p>15 familiar with the external audit of Home Infusion's</p> <p>16 reimbursement department that's referenced here?</p> <p>17 A. I am not. I recall a conversation with</p> <p>18 Ginnie Tobiason who indicated that -- by this, I</p> <p>19 don't know if "external audit" is referring to a</p> <p>20 third party auditor or whether it was an audit</p> <p>21 function within the government, but she relayed to</p> <p>22 me at least one of the state Medicaid organizations</p>	<p>1 what actually was performed for purposes of those</p> <p>2 audits?</p> <p>3 A. I do not.</p> <p>4 MS. ST. PETER-GRIFFITH: Toni, I understand</p> <p>5 that we're all receiving these documents, you know,</p> <p>6 with very short notice. If I could request that</p> <p>7 research be done and to have Mr. Fishman's answer</p> <p>8 augmented once we're able to discover that</p> <p>9 information.</p> <p>10 MS. CITERA: And, you know, I will say that,</p> <p>11 you know, we are doing what we can to try and</p> <p>12 figure this out. As he testified to, we talked to</p> <p>13 Ginnie. We talked to Tajal, and I'm still looking</p> <p>14 into it.</p> <p>15 MS. ST. PETER-GRIFFITH: Okay.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Do you see the last sentence where it</p> <p>18 says, "Semi-annual risk analysis by the</p> <p>19 reimbursement department financial analysts serve</p> <p>20 to help monitor reimbursement activities for</p> <p>21 compliance"?</p> <p>22 A. I do see that.</p>

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<p>1 Q. How does -- How did the semi-annual risk 2 analysis help monitor reimbursement activities for 3 compliance? 4 A. I don't know. 5 MS. ST. PETER-GRIFFITH: Toni, that's another 6 one of those questions that if we could learn more, 7 if you could augment Mr. Fishman's answer -- I 8 mean, I'll take a written letter augmenting it. 9 MS. CITERA: Sure. 10 MS. ST. PETER-GRIFFITH: That's fine. 11 MS. CITERA: I can also do it on the errata 12 sheet. 13 MS. ST. PETER-GRIFFITH: Yeah, that's fine. 14 Toni, the other thing I would like to point out in 15 this document is that on Page 3, that first 16 paragraph, there are a whole series of documents 17 where it says, "Further, these policies and 18 procedures conform to all corporate and individual 19 policies of the company." And then there's 20 reference to the basic operating procedures for 21 Home Infusion Services. I'll tell you, we've never 22 received that document.</p>	<p>1 Q. Sir, if you'd take a moment and read this 2 document. 3 A. Okay. 4 Q. Okay. Sir, do you see -- First of all, 5 do you recognize this document? 6 A. No. 7 Q. Have you ever seen it before? 8 A. I have not. 9 Q. Sir, this appears to be a letter dated 10 April 2nd, 1990, from Robert Mulcahey -- I'm sorry, 11 to Robert Mulcahey from James Albrecht; do you see 12 that? 13 A. I do. 14 Q. Who is James Albrecht? 15 A. Jim was an attorney, commercial attorney 16 in the legal department. 17 Q. Do you know whether this letter was ever 18 sent? 19 A. I have no knowledge. 20 Q. The letter appears to concern an inquiry 21 from Ingalls to Abbott about compliance with or the 22 -- whether the -- I guess regarding Medicare fraud</p>
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<p>1 MS. CITERA: Where are you looking? 2 MS. ST. PETER-GRIFFITH: I'm looking in the 3 middle of the top paragraph. 4 THE WITNESS: Top paragraph. 5 MS. CITERA: Oh. 6 MS. ST. PETER-GRIFFITH: And then the sentence 7 that reads, "These policies and procedures are 8 contained in several sources," we also don't have 9 any of those sources, other than I believe that Mr. 10 Rodman may have produced one or two of them and 11 Trudi Burchieri may have produced one of them. But 12 we don't have any Abbott production on that. If 13 you could check into those documents as well. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Sir, I think we're going to move onto a 16 new document. 17 A. Okay. 18 MS. CITERA: I have the Bates number for the 19 CD. It is ABT-DOJ 0395587. 20 (Exhibit Fishman 013 21 marked as requested.) 22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 and abuse pertaining to Abbott's Home Infusion 2 ventures; do you see that in the first paragraph? 3 A. I'm sorry. We're talking about -- I'm 4 not sure I understood a question to be there. 5 Q. Okay. Do you agree with me that this 6 appears to be a response to an inquiry from Ingalls 7 concerning Medicare fraud and abuse compliance 8 questions; is that fair? 9 A. Yes. 10 MS. CITERA: Objection to form. 11 BY THE WITNESS: 12 A. I'm sorry. Yes. 13 Q. And in the middle of -- there's an 14 indented two paragraphs in the middle of this 15 letter that purports to be, according to the 16 letter, an excerpt from an opinion given by Gardner 17 Carton. Do you see that? 18 A. I do. It doesn't say opinion. It says 19 memorandum. 20 Q. Okay. 21 A. I don't know whether it was an opinion or 22 not.</p>

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<p>1 Q. Well, do you see in the sentence before 2 where it says, "Therefore, we don't think it 3 appropriate to release the opinion to Ingalls"? 4 A. Yes. 5 Q. Does that suggest to you that perhaps 6 Gardner Carton provided legal opinion to Abbott? 7 MS. CITERA: Objection to the form, outside 8 the scope. 9 BY THE WITNESS: 10 A. It suggests that Gardner provided a legal 11 opinion, yes. 12 Q. And the next sentence reads, "However, 13 Ms. Riddle asks that I provide you the following 14 quote from the Gardner Carton memorandum regarding 15 proposed contracts relationships." Do you see 16 that? 17 A. I do. 18 Q. Does that suggest to you that the content 19 of this particular excerpted quotation from the 20 Gardner Carton memorandum may be part of their 21 legal opinion? 22 MS. CITERA: Objection to the form, outside</p>	<p>1 parts to that question. Can you repeat the 2 question, please? 3 (Record read as requested.) 4 MS. CITERA: Objection, same objections. 5 BY THE WITNESS: 6 A. I believe it states that it came from a 7 Gardner memorandum, so I don't question that. It 8 talks back to the joint Home Infusion therapy 9 agreement and what I don't know is on April 2nd, 10 1990, what the structure of that Home Infusion, 11 joint Home Infusion therapy agreement was to know 12 whether it pertained specifically to consignment 13 and a revenue share. 14 Q. Okay. I can look at the break and see if 15 I have that but -- 16 A. Okay. On the face of this document, I 17 can't say that for certain. 18 Q. But on the face of this document, 19 whatever the relationship is between Ingalls and 20 Abbott, you would presume from the content of the 21 language that that's the type of relationship 22 that's being referenced?</p>
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<p>1 the scope. 2 BY THE WITNESS: 3 A. I don't know whether it was part of the 4 legal opinion. It -- It clearly uses a different 5 word. It doesn't say, quote, from Gardner Carton's 6 legal opinion. It says memorandum. Whether this 7 was part of the legal opinion, back-up support for 8 the opinion, the opinion itself, I don't know. 9 Q. Okay. Fair enough. But do you have any 10 doubt that the quoted language in there came from 11 Gardner Carton and pertained to advice regarding 12 the consignment arrangements or the revenue-share 13 agreements? 14 MS. CITERA: Objection to form, outside the 15 scope. 16 BY THE WITNESS: 17 A. They have a lot of facts in that. I was 18 agreeing with some of what you said and not 19 agreeing with -- you reached some conclusions in 20 your question that I'm not sure I agreed with. 21 Q. Okay. What don't you agree with? 22 A. Can you repeat -- There was multiple</p>	<p>1 MS. CITERA: Objection to the form, outside 2 the scope. 3 BY THE WITNESS: 4 A. It's referencing a joint -- some kind of 5 proposed joint relationship between the parties, 6 yes. 7 Q. Now, the information from the Gardner 8 Carton memorandum reads, "It should be noted that 9 these contracts which the provider, not Abbott, 10 accepts assignments," excuse me, "then Abbott pays 11 for goods and services -- then pays Abbott for 12 goods and services according to a fixed-fee 13 schedule will be unlikely to be found to violate 14 the Medicare and Medicaid fraud and abuse laws." 15 Do you see that? 16 A. I do. 17 Q. The next sentence reads, "This statement 18 assumes that Abbott charges each provider an amount 19 which reflects the fair market value for goods and 20 services rendered." Do you see that? 21 A. I do. 22 Q. Did Abbott document the fair market value</p>

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<p style="text-align: right;">Page 559</p> <p>1 for goods and services that it rendered to its Home 2 Infusion customers? 3 MS. CITERA: Objection to the form, outside 4 the scope. 5 BY THE WITNESS: 6 A. I believe in describing previously before 7 lunch and describing the revenue-share arrangements 8 generally without talking specifically about a 9 given contract, I stated that not knowing which 10 contract we were talking about, whether there was 11 back-up information provided that reflected detail 12 with respect to percentages of revenue share. 13 Q. Okay. But if Abbott's -- you know, I'll 14 tell you, sir, I've deposed most of the Home 15 Infusion witnesses in this case. And they've never 16 -- no one has ever testified nor has Abbott 17 produced any documents reflecting that there's 18 back-up documentation to delineate the bases of the 19 percentages that are collected by Abbott other than 20 just in general as a percentage of particular 21 therapies. 22 So if no such back-up documentation</p>	<p style="text-align: right;">Page 561</p> <p>1 the first sentence? 2 MS. CITERA: Object to the form, outside the 3 scope. 4 BY THE WITNESS: 5 A. I don't think it's fair to conclude that 6 because you don't document it, that it isn't 7 necessarily a fair market value reflection. 8 Q. Well, how would Abbott prove it's the 9 fair market value? 10 MS. CITERA: Object to the form, outside the 11 scope. 12 BY THE WITNESS: 13 A. Abbott would have to evaluate market fair 14 value based on what the goods and services in 15 question are being charged in the market at that 16 point in time. 17 Q. And how did Abbott do that to ensure that 18 its fixed-fee schedule did not violate the Medicare 19 fraud and abuse laws as delineated in that first 20 sentence by the -- from the Gardner Carton 21 memorandum? 22 MS. CITERA: Objection to the form. Outside</p>
<p style="text-align: right;">Page 560</p> <p>1 exists, how did Abbott reflect the fair market 2 value for the goods and services rendered? 3 MS. CITERA: Objection to the form, outside 4 the scope. 5 BY THE WITNESS: 6 A. You're -- I believe you're relying on the 7 word "reflect" to mean that Abbott has to provide 8 the customer the information about fair market 9 value versus having information internally that 10 substantiates the percentage agreed to that would 11 be that back-up as to how you get to that 12 percentage. 13 Q. Well, I'm not necessarily saying that it 14 has to reflect it to the customer, although I want 15 to know whether it reflects it to the customer. I 16 just want to know what documents Abbott maintained 17 -- 18 A. I don't know. 19 Q. If Abbott didn't -- is not able to 20 document the fair market value for the goods and 21 services rendered, doesn't that defeat the 22 assumption that is the predicate for the opinion in</p>	<p style="text-align: right;">Page 562</p> <p>1 the scope. 2 BY THE WITNESS: 3 A. I don't know how Abbott arrived at its 4 percentage calculation for a fixed-fee arrangement. 5 Q. Okay. Did you know how it documented or 6 demonstrated the fair market value for the goods 7 and services rendered? 8 MS. CITERA: Same objections. 9 BY THE WITNESS: 10 A. I do not. 11 Q. The next sentence reads, "It is important 12 to recall that any unreasonably deep discount 13 offered by Abbott would indicate a lack of arm's 14 length negotiation and would cause further scrutiny 15 under this arrangement." Do you see that? 16 A. "Could cause." 17 Q. "Could cause," I'm sorry. 18 Do you see that sentence? 19 A. I do. 20 Q. What did Abbott consider to be an 21 unreasonably deep discount? 22 MS. CITERA: Objection to the form, outside the</p>

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<p style="text-align: right;">Page 563</p> <p>1 scope.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't know.</p> <p>4 Q. Would the provision of products for free</p> <p>5 subject to some future possible reimbursement,</p> <p>6 percentage of reimbursement share at a later point</p> <p>7 in time constitute an unreasonably deep discount?</p> <p>8 MS. CITERA: Object to the form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. As I testified earlier, providing product</p> <p>12 to a customer on consignment, when that customer</p> <p>13 ultimately never gets paid for it, as between</p> <p>14 Abbott and the customer, it's as if that</p> <p>15 transaction never occurred because there's no --</p> <p>16 they're not -- there's no benefit obtained by</p> <p>17 anybody.</p> <p>18 Q. Well, other than Abbott provided them</p> <p>19 product for free that they used for the therapies</p> <p>20 for their patients, right? That's consideration.</p> <p>21 MS. CITERA: Objection to the form, outside</p> <p>22 the scope.</p>	<p style="text-align: right;">Page 565</p> <p>1 them. Again, the question assumes that if the</p> <p>2 coverage was denied, that there wasn't an attempt</p> <p>3 to collect -- collect payment by the customer some</p> <p>4 other way.</p> <p>5 Q. Is that what Abbott did?</p> <p>6 A. We weren't the customer.</p> <p>7 MS. CITERA: Object to the form, outside the</p> <p>8 scope.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. But you were collecting on behalf of the</p> <p>11 customer, weren't you?</p> <p>12 MS. CITERA: Same objections.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Isn't that part of the services provided</p> <p>15 by the reimbursement department?</p> <p>16 MS. CITERA: Same objections.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I understand in certain arrangements, we</p> <p>19 were providing billing services. Whether we were</p> <p>20 providing collection services, I don't know.</p> <p>21 Q. Okay. Who pays for the product, then, if</p> <p>22 in the fact pattern we used before, Medicaid denies</p>
<p style="text-align: right;">Page 564</p> <p>1 BY THE WITNESS:</p> <p>2 A. As I stated earlier, I don't believe it's</p> <p>3 fair to characterize the arrangement on its face as</p> <p>4 for-free product.</p> <p>5 Q. Well, if the patient -- if there's no</p> <p>6 reimbursement for the patient and the customer</p> <p>7 doesn't have to pay for the Abbott product that it</p> <p>8 utilized in providing the therapy to the patient,</p> <p>9 how is that not free?</p> <p>10 MS. CITERA: Objection to the form, outside</p> <p>11 the scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. For free to whom?</p> <p>14 Q. Free to the consignment partner who is</p> <p>15 providing the therapy to the patient.</p> <p>16 MS. CITERA: Same objections.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. And free to the patient.</p> <p>19 MS. CITERA: Same objections.</p> <p>20 BY THE WITNESS:</p> <p>21 A. There's so many variables in this fact</p> <p>22 pattern, I don't even know how to start to address</p>	<p style="text-align: right;">Page 566</p> <p>1 reimbursement? Who pays Abbott for the product?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Again, we're talking about a hypothetical</p> <p>6 contract because I haven't seen the details of a</p> <p>7 specific contract that has this type of arrangement</p> <p>8 in place to know whether there was any additional</p> <p>9 language that addressed denial of reimbursement,</p> <p>10 nor do I know what the customer did with a given</p> <p>11 patient if there was a denial of reimbursement,</p> <p>12 whether they sought payment through another means</p> <p>13 and obtained that payment through another means.</p> <p>14 Q. But if countless of these proposals that</p> <p>15 are made through the Home Infusion Contract</p> <p>16 Marketing and the contracts themselves say "Abbott</p> <p>17 shares in your risk. If you're not paid for a</p> <p>18 patient, we're not paid" and if that's the</p> <p>19 representation that's made and the Home Infusion</p> <p>20 revenue-share partner is not paid for a particular</p> <p>21 therapy for a patient and Abbott doesn't get paid,</p> <p>22 doesn't Abbott provide the product, then, for free?</p>

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<p>1 MS. CITERA: Object to the form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I don't accept the premise that it's free</p> <p>5 product because it's being provided with -- on the</p> <p>6 condition of getting paid, so there's an</p> <p>7 expectation of payment. So it's not being provided</p> <p>8 for free.</p> <p>9 Q. Then where's the risk to Abbott in these</p> <p>10 risk-share arrangements?</p> <p>11 MS. CITERA: Object to the form, outside the</p> <p>12 scope. I'm just going to state again that he is not</p> <p>13 here to provide any legal analysis.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I -- I'm asked to comment on an</p> <p>16 arrangement that I don't have the contractual terms</p> <p>17 in front of me to know what the arrangement is.</p> <p>18 Q. Well, you know generally about these</p> <p>19 revenue-share arrangements, right?</p> <p>20 A. I know that one aspect of it.</p> <p>21 MS. CITERA: Same objections.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 does not collect reimbursement from the patient,</p> <p>2 who bears the risk of Abbott's cost for the product</p> <p>3 that it gives to the revenue-share partner that the</p> <p>4 revenue-share partner, in turn, utilizes for the</p> <p>5 patient?</p> <p>6 MS. CITERA: Objection to the form, outside</p> <p>7 the scope.</p> <p>8 BY THE WITNESS:</p> <p>9 A. It strikes -- it strikes me as you're</p> <p>10 asking for a legal conclusion.</p> <p>11 Q. I'm not asking for a legal conclusion.</p> <p>12 I'm asking who pays.</p> <p>13 MS. CITERA: I think you're asking for a legal</p> <p>14 conclusion.</p> <p>15 BY THE WITNESS:</p> <p>16 A. You asked me who bears the risk.</p> <p>17 Q. In terms of who's -- who's out the cost</p> <p>18 of the product?</p> <p>19 MS. CITERA: Same objections.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Assuming there are no other contractual</p> <p>22 terms that provide any other alternative than what</p>
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<p>1 Q. Okay. But in untold numbers of these</p> <p>2 presentations that are made, it is made very clear</p> <p>3 that if the Home Infusion revenue-share partner</p> <p>4 doesn't get paid, Abbott doesn't get paid. That's</p> <p>5 almost a verbatim quote, sir.</p> <p>6 And my question is, if there's no</p> <p>7 reimbursement that the revenue-share partner</p> <p>8 collects on behalf of a particular -- or from a</p> <p>9 particular patient, doesn't Abbott then provide the</p> <p>10 product utilized for services to that patient for</p> <p>11 free?</p> <p>12 MS. CITERA: Same objections.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Abbott is not providing that product to</p> <p>15 the user, so ...</p> <p>16 Q. No, it's providing it to the</p> <p>17 revenue-share partner who in turn provides it to</p> <p>18 the user, right?</p> <p>19 MS. CITERA: Objection, same objections.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Correct, that's correct.</p> <p>22 Q. Okay. So if the revenue-share partner</p>	<p>1 you're describing, Abbott would be out the cost of</p> <p>2 that product.</p> <p>3 Q. Okay. With regard to this particular</p> <p>4 quotation from the Gardner Carton memorandum, what</p> <p>5 did Abbott do -- what did Abbott or Abbott's Home</p> <p>6 Infusion or its legal department or anyone within</p> <p>7 Abbott do to ensure that Abbott's Home Infusion</p> <p>8 business arrangements complied with the provisions</p> <p>9 or the advice that is set forth from Gardner Carton</p> <p>10 in those two paragraphs?</p> <p>11 MS. CITERA: Object to the form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Can you repeat the question, please?</p> <p>14 (Record read as requested.)</p> <p>15 MS. CITERA: Same objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't know.</p> <p>18 Q. Move on to a new document.</p> <p>19 (Exhibit Fishman 014</p> <p>20 marked as requested.)</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Sir, if you could take a moment, I'm just</p>

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<p>1 going to focus on the first page of this agreement, 2 although I just want to note, the second page, this 3 is produced -- this is actually the third page, but 4 I put it first because that's what we're going to 5 concentrate on. It's Abbott-DOJ 351271. The 6 following two pages are 351269 and 351270, which I 7 will represent that's the consequence they were 8 produced to the United States by Abbott. The 9 second page appears to be a cover sheet to 10 Northwestern Memorial Hospital, Office of the 11 General Counsel. And it's -- 12 A. To or from? 13 MS. CITERA: To or from? 14 BY MS. ST. PETER-GRIFFITH: 15 Q. I'm sorry, from. Gee. From Jackie 16 Darral to Carla Kreklow. And I'm not going to ask 17 you whether the documents relate to each other. 18 That's how they were produced to us. 19 A. Okay. I'm sorry, do you want me to read 20 all of them? 21 Q. No, no, no, I just want you to read the 22 first page.</p>	<p>1 MS. CITERA: Objection to the form. 2 BY THE WITNESS: 3 A. I don't know. 4 Q. Sir, I'm going to go through certain 5 statements in here, okay. I'm going to start with 6 the second paragraph. It reads, "Abbott is 7 compensated for services and products it provides 8 through a payment of a percentage of collections by 9 client." Do you see that? 10 A. I do. 11 Q. And it says, "The percentage is 12 negotiated through arm's length discussions and is 13 based upon various services and products Abbott may 14 be asked to provide by the client." Do you see 15 that? 16 A. "May provide their clients." 17 Q. I'm sorry, "asked to provide the client." 18 Sir, what is the nature of the arm's length 19 discussions that are undertaken in negotiating the 20 percentage? 21 MS. CITERA: Object to the form, outside the 22 scope.</p>
Page 572	Page 574
<p>1 A. Okay. Dated -- titled "Abbott Home 2 Infusion Services Program and Medicare Law." 3 Q. Correct. First, let me ask you, sir, do 4 you recognize that document? Or do you want to 5 read it first? 6 A. Let me read it first. 7 Q. Sure. 8 A. Okay. 9 Q. Sir, have you had a chance to read this? 10 A. I did. 11 Q. Do you recognize this document? 12 A. I do not. 13 Q. Have you ever seen it before? 14 A. Not to my recollection. 15 Q. Do you know why Abbott would create such 16 a document discussing Abbott's Home Infusion 17 Services program and Medicare law? 18 MS. CITERA: Objection to the form, outside 19 the scope. 20 BY THE WITNESS: 21 A. No. 22 Q. Who was this distributed to?</p>	<p>1 BY THE WITNESS: 2 A. I don't know. I don't know. 3 Q. Okay. The next paragraph reads, "In a 4 few instances, Abbott has been asked whether this 5 percentage of collection approach is consistent 6 with Medicare laws and Safe Harbors." Do you see 7 that? 8 A. I do. 9 Q. Who asked that? 10 A. I don't know. 11 Q. The next sentence says, "Abbott believes 12 this percentage approach is sound under the law." 13 Do you see that? 14 A. I do. 15 Q. What's the basis for that statement? 16 MS. CITERA: Object to the form, outside the 17 scope. 18 BY THE WITNESS: 19 A. Based on the next sentence, it appears 20 that Abbott consulted with outside counsel and 21 obtained an opinion that helped it get comfortable 22 with this statement.</p>

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<p>1 Q. What was that opinion?</p> <p>2 MS. CITERA: I'm going to instruct you not to</p> <p>3 answer. And, obviously, I mean, you can ask him if</p> <p>4 he even knows, but ...</p> <p>5 BY THE WITNESS:</p> <p>6 A. Right.</p> <p>7 Q. Well, do you even know what the opinion</p> <p>8 is?</p> <p>9 A. Based on the information here talking</p> <p>10 about a Washington, D.C., counsel, I would believe</p> <p>11 it would have been the discussions with Hogan &</p> <p>12 Hartson. But I don't know what the opinion was;</p> <p>13 and if I did -- and the opinion, having been made</p> <p>14 would be -- is privileged regardless of whether I</p> <p>15 know it.</p> <p>16 MS. ST. PETER-GRIFFITH: Does Abbott intend to</p> <p>17 rely upon an advice of counsel defense?</p> <p>18 MS. CITERA: As previously stated, I'm not</p> <p>19 going to answer that question.</p> <p>20 MS. ST. PETER-GRIFFITH: Well, Abbott has not</p> <p>21 identified advice of counsel as an affirmative</p> <p>22 defense in this case. So I think I'm entitled to</p>	<p>1 document identify some kind of nexus through this</p> <p>2 footnote between Medicare Safe Harbors and IRS</p> <p>3 guidelines?</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't know.</p> <p>7 Q. Okay. Did Abbott have a concern that its</p> <p>8 Home Infusion -- Home Infusion -- Home Infusion</p> <p>9 arrangements may not have satisfied the Medicare</p> <p>10 Safe Harbors?</p> <p>11 MS. CITERA: Object to the form, outside the</p> <p>12 scope. I'm also going to instruct you not to reveal</p> <p>13 any privileged communications or analysis.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. The last sentence reads, "Instead the</p> <p>17 Safe Harbors provide that even though a large</p> <p>18 majority of percentage arrangements may represent</p> <p>19 legitimate compensation to a supplier, percentage</p> <p>20 arrangement is inappropriate if it is intended to</p> <p>21 disguise the payment of patient referrals."</p> <p>22 A. "As a disguise."</p>
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<p>1 an answer.</p> <p>2 MS. CITERA: I'm not going to answer that</p> <p>3 question.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. The next reads, "Medicare Safe Harbors do</p> <p>6 not provide automatic protections for all</p> <p>7 percentage arrangements, nor do they declare that</p> <p>8 percentage arrangements are improper," and then</p> <p>9 there's a footnote. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. First of all, what's the relationship</p> <p>12 between the IRS Safe Harbors and Medicare Safe</p> <p>13 Harbors?</p> <p>14 MS. CITERA: Objection to the form, outside</p> <p>15 the scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't know. Plus you're asking me to</p> <p>18 reach a legal conclusion, state a legal opinion</p> <p>19 about two sets of laws.</p> <p>20 Q. I'm not asking you a legal opinion. What</p> <p>21 I'm asking you is why does Abbott in this doc --</p> <p>22 Let me ask it this way: Why does Abbott in this</p>	<p>1 Q. I'm sorry, "as a disguise for patient</p> <p>2 referrals." Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Why did Abbott include that in this</p> <p>5 sentence or in this memorandum?</p> <p>6 MS. CITERA: Same objections and caution.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I don't know.</p> <p>9 Q. The next paragraph indicates that the</p> <p>10 percentage compensation negotiated by Abbott is</p> <p>11 wholly attributable to the delivery of services and</p> <p>12 product to the client. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. What's the basis for that statement?</p> <p>15 MS. CITERA: Same objections.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Not knowing anything about this document,</p> <p>18 I don't know.</p> <p>19 Q. Okay. I understand, sir, that you might</p> <p>20 not have seen this before. And to the extent that</p> <p>21 you can, you know, identify an answer and</p> <p>22 supplement it at a later point in time, I'd</p>

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<p style="text-align: right;">Page 579</p> <p>1 appreciate that.</p> <p>2 MS. ST. PETER-GRIFFITH: If that's okay, Toni.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. The second-to-last sentence in this</p> <p>5 paragraph reads, "Again, the percentage rate</p> <p>6 charged by Abbott is a competitive one falling</p> <p>7 within reasonable commercial range but does not</p> <p>8 take into account any value of any business</p> <p>9 referral." Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. How did Abbott's -- how are -- were</p> <p>12 Abbott's percentage rates charged to its Home</p> <p>13 Infusion revenue-share customers competitive?</p> <p>14 MS. CITERA: Objection to the form, outside</p> <p>15 the scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't know how Home Infusion reached</p> <p>18 their negotiated percentages.</p> <p>19 Q. For Medicare and Medicaid compliance, did</p> <p>20 Abbott believe that maintaining competitive</p> <p>21 percentage rates was important?</p> <p>22 MS. CITERA: Objection to the form, outside</p>	<p style="text-align: right;">Page 581</p> <p>1 A. Oh, design services.</p> <p>2 Q. For, for example, clean rooms and</p> <p>3 buildings designed for Home Infusion pharmacies.</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't know. It states it as an example</p> <p>7 of services.</p> <p>8 Q. Did they charge for that separately?</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Don't know.</p> <p>13 Q. If Abbott provided build-out -- if Abbott</p> <p>14 helped its Home Infusion customers bear the upfront</p> <p>15 cost of expenditures for facility design build-out</p> <p>16 in exchange for, in part, Abbott's Home Infusion</p> <p>17 partners entering into the Home Infusion</p> <p>18 arrangements with Abbott, would that be a kickback?</p> <p>19 MS. CITERA: Objection to the form, outside</p> <p>20 the scope. He's not here to testify as to what the</p> <p>21 law is.</p> <p>22 BY THE WITNESS:</p>
<p style="text-align: right;">Page 580</p> <p>1 the scope.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't know what Abbott believed</p> <p>4 important. They would believe important to comply</p> <p>5 with the laws.</p> <p>6 Q. Okay. And did they ensure that they</p> <p>7 maintained a competitive rate to comply with the</p> <p>8 laws?</p> <p>9 MS. CITERA: Same objections.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I don't know.</p> <p>12 Q. In addition to services and products, did</p> <p>13 Abbott provide design build-out services as some of</p> <p>14 its contractual arrangements?</p> <p>15 MS. CITERA: Object to the form, outside the</p> <p>16 scope.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Do you know what you mean by design</p> <p>19 build-out services?</p> <p>20 Q. Of pharmacies. I'm sorry, of external</p> <p>21 pharmacies. If you could look to the</p> <p>22 second-to-last paragraph, it's referenced there.</p>	<p style="text-align: right;">Page 582</p> <p>1 A. I believe that question clearly asks for</p> <p>2 a legal conclusion.</p> <p>3 Q. Did Abbott have concern that it</p> <p>4 constituted a kickback?</p> <p>5 A. I don't know.</p> <p>6 MS. CITERA: Same objections.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Did Abbott ever evaluate whether or not</p> <p>9 providing at no cost design build-out services for</p> <p>10 its Home Infusion revenue-share partners was in</p> <p>11 compliance with federal and state Medicare and</p> <p>12 Medicaid laws?</p> <p>13 MS. CITERA: Object to the form, outside the</p> <p>14 scope. I also would instruct you not to reveal any</p> <p>15 privileged communications or analysis.</p> <p>16 BY THE WITNESS:</p> <p>17 A. As stated previously -- As I stated</p> <p>18 previously from my own knowledge and also as</p> <p>19 reflected in the third paragraph of this document,</p> <p>20 Abbott did consult outside legal counsel. I do not</p> <p>21 know the scope of the arrangement in which the</p> <p>22 consultation occurred. And if I did, any</p>

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<p>1 communication would have been privileged.</p> <p>2 Q. Well, Abbott's providing -- well, it says</p> <p>3 at the bottom that this document is not a legal</p> <p>4 opinion. It's providing an explanation of Abbott's</p> <p>5 intent and view. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. What's the predicate for Abbott's intent</p> <p>8 or factual basis for Abbott's intent and view as</p> <p>9 set forth in this document?</p> <p>10 MS. CITERA: Objection to form, outside the</p> <p>11 scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Can you repeat the question, please?</p> <p>14 MS. ST. PETER-GRIFFITH: Sure. Can you read</p> <p>15 it back?</p> <p>16 (Record read as requested.)</p> <p>17 MS. CITERA: Same objections.</p> <p>18 THE WITNESS: Huh?</p> <p>19 MS. CITERA: Same objections.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I'm not sure -- I'm not sure I understand</p> <p>22 how I can answer what their factual basis was for</p>	<p>1 been a privileged communication.</p> <p>2 Q. Which -- When was the communication?</p> <p>3 A. Prior to whenever this document was</p> <p>4 created, but I don't know when. I don't know when</p> <p>5 the document was created.</p> <p>6 Q. And who was -- who was the legal counsel</p> <p>7 in D. C.?</p> <p>8 A. To my knowledge, it was Hogan & Hartson.</p> <p>9 Q. Who at Hogan & Hartson?</p> <p>10 A. The same woman I said before, Liz Dunst.</p> <p>11 I don't think that's D U N C E.</p> <p>12 Q. I think it might be D U N S T, actually.</p> <p>13 MS. CITERA: S T.</p> <p>14 MS. ST. PETER-GRIFFITH: We can move on to the</p> <p>15 next document.</p> <p>16 (Exhibit Fishman 015</p> <p>17 marked as requested.)</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Sir, I'm going to focus on Page 2 of this</p> <p>20 document. And primarily just at the top, but feel</p> <p>21 free to take your time.</p> <p>22 A. Okay.</p>
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<p>1 an intent.</p> <p>2 Q. Well, then, what's the basis for</p> <p>3 describing this as Abbott's intent and view?</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Let me ask the question a different way.</p> <p>7 From Abbott's intentions and viewpoint, from what's</p> <p>8 set forth in this memorandum, did it believe that</p> <p>9 its Home Infusion Services program was in</p> <p>10 compliance with Medicare and Medicaid fraud and</p> <p>11 abuse laws?</p> <p>12 MS. CITERA: Same objections.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Did it believe? I believe this document</p> <p>15 reflects Abbott's understanding of the law.</p> <p>16 Q. Okay. And what is the bases for Abbott's</p> <p>17 understanding of the law set forth in this</p> <p>18 memorandum?</p> <p>19 MS. CITERA: Same objections.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Any basis on that would have been a</p> <p>22 discussion with legal counsel, which would have</p>	<p>1 Q. Okay. Sir, do you recognize this</p> <p>2 document?</p> <p>3 A. I do not.</p> <p>4 Q. Okay. It appears on the front page to be</p> <p>5 to Kathy Riddle from James Albrecht. Is that the</p> <p>6 attorney that we discussed before?</p> <p>7 A. Right. On 5/15/1990.</p> <p>8 Q. 1990. And then the contract structure</p> <p>9 options on Page 2, do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. It appears to be a -- at least a</p> <p>12 -- I am not a transactional lawyer as you are, Mr.</p> <p>13 -- so I don't want to identify this as a term</p> <p>14 sheet. But at least it is -- it identifies options</p> <p>15 for a fee-for-service arrangement with Healthcare</p> <p>16 Services of New England. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay.</p> <p>19 A. Was there a question or just --</p> <p>20 Q. No, I just wanted to confirm. Is that</p> <p>21 your --</p> <p>22 A. I wouldn't describe it as a term sheet,</p>

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<p>1 no.</p> <p>2 Q. What would you describe it as?</p> <p>3 A. It looks like it could be kind of a</p> <p>4 cafeteria-style statement of items that could serve</p> <p>5 as a basis for a contractual relationship.</p> <p>6 Q. Okay. The first --</p> <p>7 A. I don't know -- I don't know that this</p> <p>8 was provided to Healthcare Services or whether this</p> <p>9 was purely an internal evaluation between Abbott</p> <p>10 counsel and Home Infusion.</p> <p>11 Q. Okay. Well, do you know -- did Abbott</p> <p>12 ever enter into a contract with Health Services of</p> <p>13 New England?</p> <p>14 A. I have no idea.</p> <p>15 MS. CITERA: Objection to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Sorry. I have no idea.</p> <p>18 Q. The first item at the top says, "Abbott</p> <p>19 accepts assignment of benefits on patients." Do</p> <p>20 you see that?</p> <p>21 A. I do.</p> <p>22 Q. What does that mean?</p>	<p>1 A. I believe you're asking me to reach a</p> <p>2 legal conclusion.</p> <p>3 Q. Well, I want to know whether it was</p> <p>4 Abbott's understanding that it could engage in that</p> <p>5 practice and still comply with federal and state</p> <p>6 law.</p> <p>7 MS. CITERA: Object to the form, outside the</p> <p>8 scope.</p> <p>9 BY THE WITNESS:</p> <p>10 A. You're asking me to reach a legal</p> <p>11 conclusion.</p> <p>12 Q. Was it permissible -- Let me ask you</p> <p>13 this: Did Abbott engage in this conduct where it</p> <p>14 accepted assignment of benefits on behalf of its</p> <p>15 Home Infusion customers' patients?</p> <p>16 MS. CITERA: Object to the form, outside the</p> <p>17 scope.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I've stated previously that, to my</p> <p>20 knowledge, we did not. This first bullet point</p> <p>21 suggests otherwise.</p> <p>22 Q. Would that be a problem for Abbott?</p>
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<p>1 MS. CITERA: Object to the form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. My understanding of those terms is that</p> <p>5 Abbott would -- would bill on behalf of the</p> <p>6 patients and take payment.</p> <p>7 Q. Under Abbott's own provider number?</p> <p>8 MS. CITERA: Objection to form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I don't know about under its own provider</p> <p>12 number. But, I mean, this also doesn't talk about</p> <p>13 Medicare patients. This talks about patients</p> <p>14 generally.</p> <p>15 Q. Okay. Well, would that be -- would it be</p> <p>16 a problem for Medicare and Medicaid compliance if</p> <p>17 Abbott accepted assignments of benefits on patients</p> <p>18 of its -- patients who are treated by its</p> <p>19 revenue-share partners or Home Infusion clients?</p> <p>20 MS. CITERA: Object to the form, outside the</p> <p>21 scope.</p> <p>22 BY THE WITNESS:</p>	<p>1 MS. CITERA: Object to the form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. You're asking me to reach a legal</p> <p>5 conclusion.</p> <p>6 Q. No, I'm just asking generally, would that</p> <p>7 be a problem for Abbott?</p> <p>8 MS. CITERA: Same objections.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Problem -- Again, "problem" is, did they</p> <p>11 have the space to do the work? "Problem" is too</p> <p>12 broad of a term for me to adequately answer that</p> <p>13 question.</p> <p>14 Q. Okay. Let me ask it this way: You've</p> <p>15 testified repeatedly and we've looked at a number</p> <p>16 of documents that maintained that Abbott -- Abbott</p> <p>17 personnel, including within their Home Infusion</p> <p>18 unit, were required to comply with all federal and</p> <p>19 state Medicare and Medicaid fraud and abuse laws?</p> <p>20 A. Yes.</p> <p>21 Q. If Abbott accepts assignment of benefits</p> <p>22 on patients, could its Home Infusion reimbursement</p>

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<p style="text-align: right;">Page 591</p> <p>1 employees do that?</p> <p>2 MS. CITERA: Object to the form, outside the</p> <p>3 scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. The response to that requires a legal</p> <p>6 conclusion.</p> <p>7 Q. How so?</p> <p>8 A. Because it's the same -- it's the same</p> <p>9 question worded differently in the last two times,</p> <p>10 which is you've given me a fact pattern, which is</p> <p>11 Abbott is accepting assignment of benefits on</p> <p>12 patients, and does that -- does that adhere -- does</p> <p>13 -- the employee that allows that, are they</p> <p>14 complying with the law; if Abbott does it, are they</p> <p>15 complying with the law. Whomever the party is in</p> <p>16 between, you're asking me to evaluate a set of</p> <p>17 facts against the terms of the healthcare</p> <p>18 compliance laws and reach a conclusion as to</p> <p>19 whether or not they've been violated or whether the</p> <p>20 acts are in compliance with it, which is a legal</p> <p>21 conclusion.</p> <p>22 Q. Well, set aside legal conclusion. How</p>	<p style="text-align: right;">Page 593</p> <p>1 whether or not it would comply with federal and</p> <p>2 state Medicare and Medicaid fraud and abuse laws?</p> <p>3 MS. CITERA: Same objection. I'm also going</p> <p>4 to caution you not to reveal any privileged</p> <p>5 communications or analysis.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know if they did because until</p> <p>8 this -- I saw this document with this first bullet,</p> <p>9 I was not aware that Abbott was directly accepting</p> <p>10 assignment of benefits.</p> <p>11 Q. Okay. Are you aware of any other</p> <p>12 evaluations or compliance initiatives to monitor</p> <p>13 what billing Abbott did utilizing its provider</p> <p>14 number?</p> <p>15 MS. CITERA: Object to the form.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. And when I say "its," I mean Abbott's own</p> <p>18 provider number.</p> <p>19 MS. CITERA: Object to the form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Same answer, which is to answer that, I</p> <p>22 had to know that they were using their own number,</p>
<p style="text-align: right;">Page 592</p> <p>1 about just Abbott's policy you needed to comply</p> <p>2 with the law?</p> <p>3 MS. CITERA: Same objections.</p> <p>4 BY THE WITNESS:</p> <p>5 A. But the policy is predicated on complying</p> <p>6 with the law. So if I said it didn't -- it did or</p> <p>7 didn't adhere to the policy, I'd be reaching a</p> <p>8 legal conclusion that the law -- that the act was</p> <p>9 in compliance or not in compliance. So the bottom</p> <p>10 line is, you're evaluating the underlying act in</p> <p>11 relationship to a set of laws. And that's -- to</p> <p>12 reach a conclusion, you're reaching a legal</p> <p>13 conclusion.</p> <p>14 Q. Did Abbott do any kind of evaluation as</p> <p>15 to whether if it entered into arrangements whereby</p> <p>16 Abbott would accept the assignment of benefits on</p> <p>17 behalf of its Home Infusion clients' patients --</p> <p>18 Strike that.</p> <p>19 If Abbott entered into these types of</p> <p>20 arrangements where it accepted assignment of</p> <p>21 benefits on behalf of its Home Infusion clients'</p> <p>22 patients, did it -- did Abbott consider or evaluate</p>	<p style="text-align: right;">Page 594</p> <p>1 meaning they were accepting assignment of benefits</p> <p>2 and billing under its own name, which I, until at</p> <p>3 least until the first bullet, I wasn't aware of.</p> <p>4 The second bullet doesn't necessarily reach that</p> <p>5 same conclusion.</p> <p>6 Q. Okay. Well, I'm not asking about</p> <p>7 necessarily the second bullet. I'm just asking</p> <p>8 whether Abbott did any kind of evaluation regarding</p> <p>9 how the Home Infusion reimbursement department</p> <p>10 utilized Abbott's own provider number?</p> <p>11 A. I don't know the answer to that.</p> <p>12 Q. Okay. Do you see under the -- under --</p> <p>13 hold on -- the seventh bullet point down, the</p> <p>14 seventh little O down, do you see that?</p> <p>15 A. "Healthcare Services of New England</p> <p>16 assumes"?</p> <p>17 Q. Yes. Oh, I'm sorry, no, eighth bullet</p> <p>18 point down, "Abbott pays Healthcare Services of New</p> <p>19 England a management fee of 2 percent of the net</p> <p>20 revenue collected."</p> <p>21 A. Yes.</p> <p>22 Q. Did Abbott undertake any kind of</p>

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<p style="text-align: right;">Page 595</p> <p>1 evaluation whether or not the payment of a 2 management fee to its Home Infusion clients or 3 revenue-share partners complied with federal and 4 state Medicare and Medicaid fraud and abuse 5 statutes? 6 MS. CITERA: Object to the form. I also 7 caution you not to reveal any privileged 8 communications or analysis. 9 BY THE WITNESS: 10 A. I don't know. This is 1990 time frame as 11 well, right? 12 Q. Right, it is. It's early on. 13 A. Okay. 14 (Exhibit Fishman 016 15 marked as requested.) 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Sir, do you recognize this document? 18 A. Nope. No, I do not. 19 Q. It appears to be a personal and 20 confidential memorandum to Dave Brincks from Jeff 21 Shaw. Do you see that? 22 A. I do.</p>	<p style="text-align: right;">Page 597</p> <p>1 you see that? 2 A. Yes, I do. 3 Q. Now, Mr. Shaw, the memo indicates, agreed 4 to make an inquiry of Brian Taylor. Do you see 5 that? 6 A. I do. 7 Q. Did you discuss with -- this issue with 8 Mr. Taylor? 9 A. I did not. 10 Q. The third-to-the-last paragraph reads, 11 "Brian said that Carol should tell the client that 12 Abbott legal counsel is comfortable with the 13 legality of these relationships." Do you see that? 14 A. I do. 15 Q. What is the basis for asserting that 16 Abbott's legal counsel is comfortable with the 17 legality of these relationships? 18 MS. CITERA: Objection to the form, outside 19 the scope, and also counsel you not to reveal any 20 privileged conversations or analysis. 21 BY THE WITNESS: 22 A. I don't know specifically in 199- -- July</p>
<p style="text-align: right;">Page 596</p> <p>1 Q. Who is Mr. Shaw -- 2 A. In 19- -- Abbott employee, or I assume in 3 1993 he was an Abbott employee. I did not know 4 Jeff in 1993 to know what his position was. I knew 5 him much later when he was in AHD. 6 Q. Do you see that this pertains to Leahy 7 Clinic and an inquiry from Carol McCarthy; do you 8 see that? 9 A. I do. 10 Q. Do you know who Carol McCarthy is? 11 A. I do not. And quite honestly, I was 12 wondering if she was an Abbott person or Leahy 13 Clinic person. 14 Q. That's part of the reason why I asked the 15 question. The -- Jeff Shaw at the end of the first 16 paragraph says, "I expressed to Carol my personal 17 reservations regarding this request" and the 18 enumerated request is a request, do you see, 19 seeking a memorandum from an Abbott attorney 20 stating that in his or her judgment Abbott's 21 revenue-share structure for Home Infusion service 22 was not in violation of Medicare Safe Harbors. Do</p>	<p style="text-align: right;">Page 598</p> <p>1 of 1993 what the basis of that was. This 2 post-dates the inquiry made previously to the 3 Washington law -- or the Hogan & Hartson -- I think 4 it predates. If I recall the Ingalls communication 5 was in '92. So sometime in '92, an inquiry was 6 made to discuss with legal counsel -- outside legal 7 counsel about relationships generally. I don't 8 know if that served as further foundation for that 9 or not. 10 Q. You anticipated one of my next questions, 11 which is, do you know which legal counsel is being 12 referenced here? Is it outside legal counsel, or 13 is it in-house? 14 A. Abbott legal counsel would be in-house. 15 Q. Okay. 16 A. My use of that term, I would not describe 17 an outside attorney as Abbott legal counsel. I 18 don't know how Jeff was using those terms, if he -- 19 as a non-lawyer, he could have used it, you know, 20 all lawyers are the same, kind of interchangeably. 21 I would not interpret that, but I don't know what 22 he meant.</p>

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<p>1 MS. ST. PETER-GRIFFITH: We have less than 2 five minutes left on the tape. I'm done with this 3 document. Why don't we take a break. 4 THE VIDEOGRAPHER: Going off the record at 5 2:15 p.m. 6 (A short break was had.) 7 (Exhibit Fishman 017 8 marked as requested.) 9 THE VIDEOGRAPHER: Beginning of Videotape No. 10 5, the deposition of Mr. Fishman. We're back on 11 the record at 2:29 p.m. 12 BY THE WITNESS: 13 A. They look like they're both the same 14 document. 15 Q. Oh, yes, they are. I'm sorry. I think 16 that -- I'm only interested in the first page. 17 A. Oh, I'm sorry. I should keep both of 18 them? 19 Q. Because they're two different versions 20 the same -- 21 A. One is a copy, one is the sendee. 22 Q. Correct.</p>	<p>1 MS. CITERA: Table this. I'm going to send 2 this email. 3 THE WITNESS: Give it back? 4 MS. ST. PETER-GRIFFITH: Hold it in front of 5 you because it's already been marked, but we will 6 -- 7 (Exhibit Fishman 018 8 marked as requested.) 9 MS. ST. PETER-GRIFFITH: I believe, Toni, that 10 those are the only two versions that we found of 11 that document. 12 MS. CITERA: Okay. 13 BY THE WITNESS: 14 A. I'm assuming you would like me to read 15 this? 16 Q. Yes, please. Yes. That will give Toni 17 time to text, too. 18 MS. CITERA: I'm done typing, so ... Are we 19 on? 20 MS. ST. PETER-GRIFFITH: Yes. 21 MS. CITERA: Sorry. 22 MS. ST. PETER-GRIFFITH: That's Exhibit 18,</p>
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<p>1 MS. CITERA: You know, this to me seems to be 2 privileged. And so I'm just wondering if -- I 3 don't know why it was produced. 4 MS. ST. PETER-GRIFFITH: Do you want -- Do you 5 want to make an inquiry, and I'll defer it to a 6 later point in time? 7 MS. CITERA: Sure. Has this been used as an 8 exhibit in another deposition? Can you tell me 9 that? 10 MS. ST. PETER-GRIFFITH: I don't think so 11 because I'm pretty sure the only person we would 12 have used it for would have been Tobiason, and this 13 wasn't produced then. We didn't have this 14 production then. I'm assuming, Toni, that Gorman 15 -- I know Riddle is internal. Is Gorman internal 16 as well? 17 THE WITNESS: Yes. 18 MS. CITERA: I'm assuming by the number, yeah. 19 THE WITNESS: Yes, he's an internal -- he was 20 an internal Abbott person. 21 MS. ST. PETER-GRIFFITH: Okay. We can -- why 22 don't we --</p>	<p>1 Toni. 2 BY THE WITNESS: 3 A. Okay. 4 Q. Sir, Exhibit 18, is a May 19th, 1993 5 letter from Christopher Herden, Contract Marketing 6 analyst, within Abbott Home Infusion to Gerald 7 Clouse, executive director of Kettering Healthcare. 8 Do you see that? 9 A. I do. 10 Q. In the general -- We're not necessarily 11 going to go line by line of this letter. But the 12 general substance of the letter seems to be that 13 Midwest Home Infusion Services has a concern about 14 -- or apparently raised by Midwest legal counsel's 15 concern about percentage of collections and the 16 possible implication under Safe Harbor rules. Do 17 you see that in the second paragraph? 18 A. I do. 19 Q. The next -- First of all, approximately 20 how many of Abbott's Home Infusion partners raised 21 concerns about the legality or the compliance 22 implications of the percentage of collection</p>

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<p>1 arrangements?</p> <p>2 A. I don't know.</p> <p>3 MS. CITERA: Object to the form, outside the</p> <p>4 scope.</p> <p>5 THE WITNESS: Sorry.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. The second sentence in that second</p> <p>8 paragraph reads, "Although Abbott is very</p> <p>9 comfortable with the structure of a percentage of</p> <p>10 collections agreement, Abbott nonetheless was</p> <p>11 willing to modify our agreement to follow a</p> <p>12 fee-for-service approach as requested by Midwest</p> <p>13 counsel." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. What's the difference between a</p> <p>16 percentage of collection and fee-for-service</p> <p>17 approach?</p> <p>18 MS. CITERA: Object to form, outside the</p> <p>19 scope.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Well, let me ask it this way: Is</p> <p>22 fee-for-service a particular type of arrangement</p>	<p>1 A. Correct. I think there might be -- I had</p> <p>2 provided products and/or services. This seems to</p> <p>3 differentiate products versus services. It looks</p> <p>4 at the end of this document, they're talking about</p> <p>5 a product sales agreement, which may mean -- again,</p> <p>6 I don't know, in this particular instance -- may</p> <p>7 mean just the sale of products versus a</p> <p>8 fee-for-service, appears to talk about payment for</p> <p>9 services.</p> <p>10 Q. Okay.</p> <p>11 A. And I suppose you could have four, you</p> <p>12 know, just fees, just products, just services, or</p> <p>13 both.</p> <p>14 Q. Got you.</p> <p>15 A. And the other one, and the percentage of</p> <p>16 collections.</p> <p>17 Q. In terms of this second sentence where it</p> <p>18 says although Abbott was very comfortable with the</p> <p>19 structure of a fee-for -- or percentage of</p> <p>20 collections agreement, other than what you've</p> <p>21 testified today, do you understand why Abbott was</p> <p>22 very comfortable with the percentage of collections</p>
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<p>1 that Abbott Home Infusion was willing to offer to</p> <p>2 customers?</p> <p>3 MS. CITERA: Same objections.</p> <p>4 THE WITNESS: I'm sorry. Did you get your</p> <p>5 objection?</p> <p>6 MS. CITERA: She got it.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Okay. I don't have personal knowledge.</p> <p>9 The term "fee-for-service" suggests that a payment,</p> <p>10 there's a negotiated payment for a -- for a service</p> <p>11 provided.</p> <p>12 Q. Okay. Going back to when we earlier on</p> <p>13 in the day discussed your understanding of the</p> <p>14 different structures, would that be the type of</p> <p>15 arrangement which you indicated was one of the</p> <p>16 possible Home Infusion arrangements whereby the</p> <p>17 customer would buy the product and then pay for</p> <p>18 services --</p> <p>19 MS. CITERA: Same objections.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. -- as opposed to receiving it on a</p> <p>22 consignment basis?</p>	<p>1 agreements? And if you want to rely upon your</p> <p>2 prior testimony, that's fine.</p> <p>3 MS. CITERA: Objection to form, outside the</p> <p>4 scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't have anything to add to my prior</p> <p>7 testimony.</p> <p>8 Q. Okay.</p> <p>9 (Exhibit Fishman 019</p> <p>10 marked as requested.)</p> <p>11 MS. CITERA: I'm sorry. I'm going to have to</p> <p>12 do the same thing. I don't understand why this was</p> <p>13 produced. I'm going to have to ask about it.</p> <p>14 We're going to have to table it as well.</p> <p>15 MS. ST. PETER-GRIFFITH: Okay. Toni, I just</p> <p>16 want to point out that -- just the -- its Bates</p> <p>17 numbers are sequential. So I believe this may have</p> <p>18 been the memorandum that was sent out to Gerald</p> <p>19 Clouse, or at least this set is sequential.</p> <p>20 MS. CITERA: Yeah, I understand what you're</p> <p>21 saying. 18 and 19?</p> <p>22 MS. ST. PETER-GRIFFITH: Yeah.</p>

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<p>1 MS. CITERA: Let me just read this in more 2 detail, but you may be correct. 3 MS. ST. PETER-GRIFFITH: Sure. 4 MS. CITERA: I'm going to let you go into it 5 because it appears that you may be right. I'm 6 going to obviously reserve my right to snap it back 7 once I'm able to do further analysis and also to -- 8 I mean, I don't know that I can snap back the 9 testimony -- but, you know, to assert a privilege 10 over this. But, you know, based on the Bates range 11 and the date of the memo that is written by Mr. 12 Taylor and the date of the letter that is written 13 by Mr. Herden, and the fact it's Mr. Herden on both 14 memos, it would appear to be the same as the one 15 referred to in 18. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Mr. Fishman, have you had an opportunity 18 to review this document? 19 A. Yes, I have. 20 Q. And as we've just discussed, it appears 21 to be the memorandum that was attached to Exhibit 22 18. Sir, I'd like to go over some of what is</p>	<p>1 the letter. Other than what you've testified, are 2 you -- to already, are you aware of any other bases 3 for Abbott's comfort level with the legality of the 4 structure? 5 A. I am not. 6 Q. The next sentence reads, "After the Safe 7 Harbor was issued in 1991, we had a more complex 8 percentage of calculations contract reviewed by 9 Washington, D.C., counsel, specializing in the 10 Medicare area." Right? 11 A. I see that. 12 Q. Why did Abbott undertake such a review 13 after the publication of the Medicare Safe Harbors 14 issued in 1991? 15 MS. CITERA: Objection to the form, outside 16 the scope. I also would caution you not to reveal 17 any privileged communications. 18 BY THE WITNESS: 19 A. I don't know precisely, but I also don't 20 know that the reference to review by Washington 21 counsel was also part of the Ingalls analysis. And 22 it talks about a more complex percentage of</p>
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<p>1 contained in Mr. -- this appears to be a memo from 2 the Office of General Counsel signed by Brian S. 3 Taylor. Do you see that? 4 A. I do. 5 Q. -- attorney, dated May 18, 1993 to C. 6 Herden regarding Midwest Home Infusion Services, 7 right? 8 A. Correct. 9 Q. Did you discuss any of these memoranda 10 with Mr. Taylor when you spoke with him? 11 A. I did not. 12 Q. The first paragraph appears to sort of 13 discuss the issue with -- 14 A. Can I add, I didn't because I didn't know 15 they existed. 16 Q. Okay. The first sentence of the second 17 paragraph indicates as background, Abbott used a 18 percentage of collections approach in a number of 19 contracts and is comfortable with the legality of 20 the structure. 21 Again, I'm going to ask you the same 22 question I asked you about a similar statement in</p>	<p>1 collections contract which might have been that 2 contract. 3 Q. Okay. 4 A. So the clause after the Medicare Safe 5 Harbors issued in 1991 might be just a reference 6 point for where in the regulatory world an analysis 7 occurred. 8 Q. Okay. Who was that Washington, D.C. 9 counsel? 10 A. I understand it to be Hogan & Hartson. 11 Q. Who were the two partners who were former 12 senior staff to OIG, Office of Inspector General? 13 A. I can't answer that, nor do I know the 14 name I mentioned is one of those two. I don't know 15 her background to know whether Liz Dunst was a 16 senior staff -- prior senior staffer on OIG. 17 Q. Why did these lawyers or did these 18 counsel provide a basis for their conclusion that 19 they saw no basis for the transaction under 20 Medicare law? 21 MS. CITERA: Objection to the form, outside 22 the scope.</p>

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<p>1 BY THE WITNESS:</p> <p>2 A. I'm sorry. Can you repeat the question?</p> <p>3 MS. ST. PETER-GRIFFITH: Sure. Can you read</p> <p>4 it back.</p> <p>5 (Record read as requested.)</p> <p>6 MS. CITERA: Same objections, and I also</p> <p>7 caution you not to reveal any privilege.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Any basis -- any basis for their</p> <p>10 conclusion and any conclusion they reached would</p> <p>11 have been privileged.</p> <p>12 MS. ST. PETER-GRIFFITH: Are you instructing</p> <p>13 him not to answer?</p> <p>14 MS. CITERA: I am.</p> <p>15 MS. ST. PETER-GRIFFITH: Okay. I mean, it's</p> <p>16 our position that this issue is waived. I'd like</p> <p>17 to discover the predicate for the statement that</p> <p>18 they saw no problem for this transaction under the</p> <p>19 Medicare law.</p> <p>20 MS. CITERA: Obviously we disagree with that</p> <p>21 statement, and I'm instructing him not to answer.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 Infusion undertake routine or regular reviews to</p> <p>2 ensure that it did more than a superficial --</p> <p>3 superficial review to substantiate the legitimacy</p> <p>4 of the percentage figure?</p> <p>5 MS. CITERA: Same objections, caution.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know.</p> <p>8 Q. The next sentence reads, "The attorneys</p> <p>9 asked questions concerning the elements that went</p> <p>10 into the percentage figures and were satisfied with</p> <p>11 answers and rationale for this approach." Do you</p> <p>12 see that?</p> <p>13 A. I do.</p> <p>14 Q. What questions were asked?</p> <p>15 MS. CITERA: Same objections, same caution.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't know what the questions asked</p> <p>18 were or the answers given, but I think any</p> <p>19 communication with counsel would have been</p> <p>20 privileged.</p> <p>21 MS. ST. PETER-GRIFFITH: Well, Toni, I know he</p> <p>22 doesn't know. But it's our position that this is</p>
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<p>1 Q. The next sentence reads, "The Safe</p> <p>2 Harbors recognize percentage arrangements have a</p> <p>3 place in healthcare -- in healthcare business; but</p> <p>4 from a concern that a percentage arrangement could</p> <p>5 be devised to mask referral payments, the Safe</p> <p>6 Harbors require more than a superficial review to</p> <p>7 substantiate the legitimacy of the percentage</p> <p>8 figure." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What measures did Abbott undertake, did</p> <p>11 Abbott Home Infusion undertake to ensure that it</p> <p>12 did more than a superficial review to substantiate</p> <p>13 the legitimacy of the percentage figure?</p> <p>14 MS. CITERA: Objection to form, outside the</p> <p>15 scope. I also caution you not to reveal any</p> <p>16 privileged communications.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Yeah, I don't know what efforts the Home</p> <p>19 Infusion business took to establish their</p> <p>20 contractual terms, financial contractual terms.</p> <p>21 Q. Did -- For purposes of ensuring</p> <p>22 compliance with the Safe Harbors, did Abbott Home</p>	<p>1 discoverable and has been waived. And also to the</p> <p>2 extent that Abbott intends to rely upon an advice</p> <p>3 of counsel, we're entitled to get into it.</p> <p>4 MS. CITERA: Obviously we disagree.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Now, in the third paragraph, the second</p> <p>7 sentence reads, "First, in this uncertain</p> <p>8 environment of collection payments, this approach</p> <p>9 fosters a sense of partnership and commitment</p> <p>10 between companies through a risk -- through a</p> <p>11 sharing of risk." Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. The next sentence reads, "It lets the</p> <p>14 other company know that Abbott is prepared to</p> <p>15 accept a portion of risk of nonpayment." Do you</p> <p>16 see that?</p> <p>17 A. I do.</p> <p>18 Q. Is that the risk of nonpayment that we</p> <p>19 were discussing before?</p> <p>20 MS. CITERA: Same objections and instruction.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't know precisely what they're</p>

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<p>1 referring to; but it would be in a collection of</p> <p>2 payments agreement, it would be nonpayment from any</p> <p>3 patient.</p> <p>4 Q. Okay.</p> <p>5 A. Medicare or otherwise.</p> <p>6 Q. Okay.</p> <p>7 MS. CITERA: Ann, I'm just going to stop you</p> <p>8 here because I think I want to take a break. I</p> <p>9 appreciate you're asserting there was a waiver. I</p> <p>10 don't think there was. I'd like to try to get a</p> <p>11 little more information about this document before</p> <p>12 we proceed.</p> <p>13 MS. ST. PETER-GRIFFITH: Okay. Well, we're</p> <p>14 running a little short on time if you want to</p> <p>15 finish before 4:30. Can we make it quick?</p> <p>16 MS. CITERA: At least let me make the inquiry</p> <p>17 and see what I can do.</p> <p>18 MS. ST. PETER-GRIFFITH: Okay. Why don't we</p> <p>19 go off the record briefly then.</p> <p>20 THE VIDEOGRAPHER: Going off the record at</p> <p>21 2:51 p.m.</p> <p>22 (A short break was had.)</p>	<p>1 for Exhibit 17 back.</p> <p>2 MR. ANDERSON: That's got some notes on it.</p> <p>3 We'll destroy that one.</p> <p>4 MS. CITERA: Sure.</p> <p>5 MR. ANDERSON: Here's a clean copy.</p> <p>6 MS. ST. PETER-GRIFFITH: That's Page 2.</p> <p>7 MR. ANDERSON: You can do that just state</p> <p>8 you'll destroy it.</p> <p>9 MS. ST. PETER-GRIFFITH: There we go, Toni.</p> <p>10 MS. CITERA: Obviously any other copies that</p> <p>11 are at either of your offices, we would ask that</p> <p>12 you destroy.</p> <p>13 MS. ST. PETER-GRIFFITH: You know what? At</p> <p>14 the end of the day, I need to get the Bates numbers</p> <p>15 of that.</p> <p>16 MS. CITERA: Okay. Okay.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Sir, if we could -- Where did we leave</p> <p>19 off on this document?</p> <p>20 A. Are we on Exhibit 19 still?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p>
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<p>1 (Enter Mr. Anderson.)</p> <p>2 THE VIDEOGRAPHER: We're back on the record at</p> <p>3 3:00 p.m.</p> <p>4 MS. CITERA: I'm going to let the deposition</p> <p>5 and the questioning continue. You know, obviously</p> <p>6 as I said before, we reserve the right to snap this</p> <p>7 document back at a later time. Right now it</p> <p>8 appears that it is a memo that was sent along with</p> <p>9 the letter, Exhibit 18. But we are reserving our</p> <p>10 rights. We obviously do not agree with you that</p> <p>11 any privilege was waived. But we will continue</p> <p>12 with the deposition.</p> <p>13 I will also add on a separate note that</p> <p>14 Exhibit 17, we are snapping back.</p> <p>15 MS. ST. PETER-GRIFFITH: Okay. Toni, do you</p> <p>16 just want to take custody, then, of the actual</p> <p>17 marked exhibit?</p> <p>18 MS. CITERA: Uh-huh.</p> <p>19 MS. ST. PETER-GRIFFITH: We'll just let the</p> <p>20 record reflect counsel for Abbott has possession of</p> <p>21 that document.</p> <p>22 MS. CITERA: And then we would obviously ask</p>	<p>1 Q. We were discussing the portion, I</p> <p>2 believe, of this memorandum concerning the</p> <p>3 uncertainty of collection of payments and the risk</p> <p>4 of nonpayment, right?</p> <p>5 A. Oh, the second -- you were reading the</p> <p>6 second sentence in the third paragraph?</p> <p>7 Q. Yes.</p> <p>8 A. Okay. I'm sorry. Was there an</p> <p>9 outstanding question pending?</p> <p>10 Q. Sure, sure. I just wanted to first say,</p> <p>11 was that your recollection of where we left off?</p> <p>12 A. Yeah. I was reading -- I don't know if</p> <p>13 it was the second and third sentence or just the</p> <p>14 second sentence?</p> <p>15 Q. Well, I'd like to direct your attention</p> <p>16 to the third sentence. I mean, we spent some time</p> <p>17 earlier today going over Abbott's risk of</p> <p>18 nonpayment.</p> <p>19 Is the risk of nonpayment to Abbott</p> <p>20 two-fold: First, the cost of its product and,</p> <p>21 second, the cost of the services provided with</p> <p>22 regard to a particular patient who may not be</p>

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<p>1 reimbursed by a third-party provider?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope. I also caution you not to reveal any</p> <p>4 privileged discussions.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Yeah, without knowing the terms of the</p> <p>7 contract on its face, a product and services</p> <p>8 arrangement on a collection of payments basis, the</p> <p>9 risk would be with respect to products and</p> <p>10 services.</p> <p>11 Q. Okay. And in terms of the risk on the</p> <p>12 products, it would be Abbott's cost associated with</p> <p>13 providing that product to the consignment partner,</p> <p>14 correct?</p> <p>15 MS. CITERA: Same objections.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Same comment that without knowing the</p> <p>18 terms in which the contract reads but on its face,</p> <p>19 without any other terms, the risk of collection of</p> <p>20 payments, that would be true.</p> <p>21 Q. The next sentence -- the next sentence</p> <p>22 reads, "Second, Abbott invests significant funds</p>	<p>1 expenditures some customers would find difficult to</p> <p>2 manage if they had to bear them up front." Do you</p> <p>3 see that?</p> <p>4 A. I do.</p> <p>5 Q. In entering into some of these risk-share</p> <p>6 arrangements, did Abbott provide upfront</p> <p>7 expenditures so that its risk-share clients would</p> <p>8 not have to?</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Repeat the question.</p> <p>13 (Record read as requested.)</p> <p>14 BY THE WITNESS:</p> <p>15 A. I don't know that I can reach that</p> <p>16 conclusion. I'm also -- I'm realizing terminology</p> <p>17 is different, that we have to assume the collection</p> <p>18 of payments arrangement and risk share are one and</p> <p>19 the same. I think we have been using them</p> <p>20 interchangeably.</p> <p>21 Q. Okay.</p> <p>22 A. And so assuming that to be true, I don't</p>
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<p>1 and efforts in establishing a comprehensive program</p> <p>2 offered in its entirety to customers." Do you see</p> <p>3 that?</p> <p>4 A. I do.</p> <p>5 Q. What investments were made in ensuring</p> <p>6 that Abbott's comprehensive program complied with</p> <p>7 federal and state Medicare and Medicaid fraud and</p> <p>8 abuse statutes?</p> <p>9 MS. CITERA: Objection to the form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I don't know what the comprehensive</p> <p>12 program would have been.</p> <p>13 Q. Okay. Do you know what the significant</p> <p>14 investment of funds is?</p> <p>15 A. I don't have knowledge. I'd have to</p> <p>16 speculate.</p> <p>17 Q. The next -- The next sentence which goes</p> <p>18 over to the next page says, "We avoid breaking out</p> <p>19 separate charges because, one, the broader program</p> <p>20 investments -- i.e., facility, equipment, and</p> <p>21 services, facility design services -- provided</p> <p>22 initially by Abbott represent substantial</p>	<p>1 know. It sounds like the way this is written, that</p> <p>2 Abbott made investments in its own operations and</p> <p>3 own capabilities of providing Home Infusion</p> <p>4 Services and that that's part of the services it's</p> <p>5 providing. And if they didn't provide those</p> <p>6 services, they would be -- a customer would have to</p> <p>7 provide them themselves. And it's like buying a</p> <p>8 product. If you didn't buy product from me, you'd</p> <p>9 have to make it yourself. And you'd have to have a</p> <p>10 plant and production equipment and people to do it.</p> <p>11 I've already made that investment. I have the</p> <p>12 capabilities of providing it to you. If you don't</p> <p>13 -- we don't do this together in this way, you'll</p> <p>14 have to do it yourself. Then you'll have to buy</p> <p>15 your factory and equipment and have all your people</p> <p>16 to make it.</p> <p>17 Q. Would that be a basis for not breaking</p> <p>18 out separate charges to demonstrate the fair market</p> <p>19 value of the goods and services provided?</p> <p>20 MS. CITERA: Objection to the form, outside</p> <p>21 the scope.</p> <p>22 BY THE WITNESS:</p>

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<p>1 A. I don't know.</p> <p>2 Q. If you could look under Item 2 on the</p> <p>3 second page, do you see where it says, "The broader</p> <p>4 program investments"?</p> <p>5 A. Footnote 2?</p> <p>6 Q. No, no, no, I'm sorry. Under -- In the</p> <p>7 first paragraph, continuing from the last page --</p> <p>8 A. Oh, okay, "The case-by-case mix" --</p> <p>9 Q. "Mix of products and services makes</p> <p>10 establishing separate charges administratively</p> <p>11 difficult." Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Is that a reason why Abbott did not</p> <p>14 provide a separate breakout of charges for its</p> <p>15 consigned products and its services to demonstrate</p> <p>16 the fair market value for those products and</p> <p>17 services?</p> <p>18 MS. CITERA: Objection to the form, outside</p> <p>19 the scope. And I caution you not to reveal any</p> <p>20 privileged communications or analysis.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Based on the language that Mr. Taylor</p>	<p>1 not providing fair market value information.</p> <p>2 Q. Well, I understand. But it says, "We</p> <p>3 avoid breaking out separate charges." What charges</p> <p>4 does Abbott avoid breaking out?</p> <p>5 MS. CITERA: Same objections and caution.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Not having written this, it would be the</p> <p>8 charges associated with providing products and</p> <p>9 services.</p> <p>10 Q. Okay. And from the Gardner Carton</p> <p>11 opinion before, we learned that it was important</p> <p>12 for purposes of demonstrating Medicare and Medicaid</p> <p>13 compliance to be able to demonstrate the fair</p> <p>14 market value for services and product; is that</p> <p>15 fair?</p> <p>16 MS. CITERA: Object to the form, outside the</p> <p>17 scope.</p> <p>18 BY THE WITNESS:</p> <p>19 A. In this whole line of question, I guess I</p> <p>20 would look at the penultimate paragraph to respond</p> <p>21 to your questions.</p> <p>22 Q. Okay. The penultimate paragraph meaning</p>
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<p>1 provided, there's no correlation between that</p> <p>2 explanation and not providing fair market value.</p> <p>3 Q. Okay. But, I mean, you see that Mr.</p> <p>4 Taylor's providing -- appears to be providing a</p> <p>5 reason why Abbott does not break out separate</p> <p>6 charges for product and services, is that fair, in</p> <p>7 that paragraph?</p> <p>8 MS. CITERA: Object to the form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I believe the words state that we avoid</p> <p>12 breaking out because of 1 and 2.</p> <p>13 Q. Okay. Are those Abbott's -- Are those</p> <p>14 two reasons the reasons why Abbott does not break</p> <p>15 out the fair market value of services and the cost</p> <p>16 of services and products to its consignment</p> <p>17 partners?</p> <p>18 MS. CITERA: Objection to the form, outside</p> <p>19 the scope, same caution regarding privilege.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't -- Again, I don't believe the</p> <p>22 language addresses in the context of providing or</p>	<p>1 the one in the prior exhibit concerning --</p> <p>2 A. No, the penultimate paragraph on Exhibit</p> <p>3 19.</p> <p>4 Q. Okay.</p> <p>5 A. "Finally."</p> <p>6 Q. Okay. It says, "Finally, if there be any</p> <p>7 concern of ensuring compliance with Medicare laws</p> <p>8 from a cost reporting standpoint, we are always</p> <p>9 willing to assist clients in providing any</p> <p>10 information needed to prepare accurate cost</p> <p>11 reports."</p> <p>12 A. Correct.</p> <p>13 Q. What does cost reporting have to do --</p> <p>14 Well, let me ask you this: What information did</p> <p>15 Abbott Home Infusion provide to its clients to</p> <p>16 assist them in preparing accurate cost reports?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't know that they were ever asked to</p> <p>21 provide; and if they were asked to provide, what</p> <p>22 they arguably would have provided would have been</p>

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<p>1 the information requested. It's an offer to 2 provide the information. Whether it happened with 3 this customer or any other customer, I do not know. 4 Q. Sir, I think we're done with our Home 5 Infusion documents. There is one relatively newly 6 produced document that I would like to go over, and 7 it is in that stack. 8 A. Exhibit 8? 9 Q. Exhibit 8. And it is the Cliff Berman 10 presentation. We're going to start there? 11 A. Okay. 12 Q. Sir, have you had an opportunity to 13 review this document? 14 A. I saw it. I reviewed it yesterday. 15 Q. I'm going to start -- 16 A. Or last night, actually. 17 Q. All right. Didn't we all review it last 18 night. 19 I have a variety of questions to go over. 20 But I'd like to start, sir, sort of in the middle 21 of the document at Page Abbott DOJ 0395561. 22 A. Okay.</p>	<p>1 A. I did not talk to him about this specific 2 -- Let me think about this. The Tuesday before my 3 deposition; so last Tuesday, I met with Cliff. 4 Q. Did you have this document then? 5 A. I did not have this document. 6 Q. Okay. Did you discuss this document with 7 Mr. Berman? 8 A. We discussed presentations he made. I 9 don't know that he -- he must have specifically 10 mentioned -- he must have been referring to this 11 because he talked about Testa, Hurwitz. 12 Q. Do you know whether -- Well, do you know 13 how many presentations Mr. Berman made that he 14 might have been referencing? 15 A. He made many presentations. As a 16 healthcare compliance lawyer, that was one of his 17 primary functions. 18 Q. Okay. And you testified earlier, Mr. 19 Berman is the subject matter expert that was 20 brought into Abbott's legal? 21 A. Yes. 22 Q. At or around the time of --</p>
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<p>1 Q. Sir, if you could take a look at that 2 page, please? 3 A. Okay. 4 Q. First, what does "risk areas" mean? 5 Well, let me ask you, let's start out, what is this 6 presentation or document? 7 A. This document is a presentation that 8 Cliff Berman provided. I'm not certain of the 9 audience. In talking with Cliff, he indicated that 10 he pretty much lifted it from a presentation that 11 was provided to him by Joe Savage at Testa, 12 Hurwitz. 13 Q. Okay. We need to go back, Mr. Fishman. 14 A. Okay. 15 Q. I don't think Mr. Berman was one of those 16 -- Well, let me ask you this. When did you discuss 17 this with Mr. Berman? 18 A. Before my original deposition. When did 19 I discuss this document? 20 Q. Yes, this document. I know you talked 21 with Mr. Berman before your deposition. I guess, 22 this is my confusion, sir.</p>	<p>1 A. December '02. 2 Q. December '02, okay. Was he brought in 3 after the Ross settlement or around that time? 4 A. It would have been prior to the Ross 5 settlement because the Ross settlement was July of 6 '03. 7 Q. Was he brought on after TAP, after the 8 TAP settlement and criminal pleas? 9 MS. CITERA: Objection to the form. 10 BY THE WITNESS: 11 A. That's kind of factual. I don't know the 12 chronology exactly when the TAP criminal plea and 13 payments were. It's just a fact he started the 14 last week of December of '02. So if TAP occurred 15 prior to that, it would have been yes. If TAP 16 occurred after that, the answer is no. 17 Q. Well, we're going to -- We'll get into 18 that a little bit more because I think there are 19 TAP references in here. 20 A. Oh, okay. 21 Q. Sir, how do you know that it's this 22 particular presentation that he was -- that Mr.</p>

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<p>1 Berman was referring to that he lifted from Joe 2 Savage? 3 A. There is at least one page in here that 4 has Testa, Hurwitz's name on it. 5 MS. CITERA: If I can assist -- 6 MS. ST. PETER-GRIFFITH: Sure. 7 MS. CITERA: It's Abbott-DOJ 03 -- well, at 8 least this is one, 0395554. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Okay. Okay. If we could flip to 5561 -- 11 A. Okay. 12 Q. Sir, this particular slide of the 13 presentation deals with risk areas. Do you see 14 that? 15 A. I do. 16 Q. What is meant by "risk areas"? 17 A. I believe you'd have to read it in 18 context with the Document 0395559, which is OIG 19 Compliance Guidance For Pharmaceutical 20 Manufacturers. 21 Q. Okay. 22 A. And then the next page which is 0395560,</p>	<p>1 (Record read as requested.) 2 MS. CITERA: Same objection. 3 BY THE WITNESS: 4 A. Are we talking about after the OIG 5 guidance on this? 6 Q. At any time. 7 A. At any time. 8 MS. CITERA: Same objections. 9 BY THE WITNESS: 10 A. I think the question assumes a conclusion 11 that we provided pricing information directly or 12 indirectly that would have implicated the statute. 13 You've reached a conclusion through your question 14 and asking me which -- what information fits into 15 that conclusion. 16 Q. Well, I'm asking about Abbott's -- I 17 mean, well, let me ask you, did this particular 18 paragraph apply to Abbott? 19 A. It applied to everybody. 20 Q. Okay. So what -- what price information 21 that Abbott reported, if any, may have been 22 implicated -- may have implicated the False Claims</p>
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<p>1 which identifies three risk areas identified by 2 OIG. 3 Q. Okay. 4 A. Then next document gets into No. 1 of the 5 three areas identified. 6 Q. Okay. And it says, "Guidance asserts 7 that a manufacturer may be liable under the False 8 Claims Act if the government reimbursement for a 9 product depends partly on information it reported 10 directly or indirectly." Do you see that? 11 A. "Pricing information." 12 Q. "Pricing information," okay. 13 A. Yes. 14 Q. What pricing information did Abbott 15 directly or indirectly report that it understood 16 may implicate the False Claims Act? 17 MS. CITERA: Objection to the form, outside 18 the scope. 19 BY THE WITNESS: 20 A. Well, you have to repeat that, please. 21 MS. ST. PETER-GRIFFITH: Can you read that 22 question back, please?</p>	<p>1 Act? 2 MS. CITERA: Object to the form, outside the 3 scope. 4 BY THE WITNESS: 5 A. It's -- The question -- The form of the 6 question I find to be assuming a conclusion. 7 Again, I can read what the guidance from OIG -- 8 This is a recitation, which it's in quotes. I 9 mean, it's a recitation of what OIG is advising the 10 industry. And it's asserting in 1993 that 11 manufacturer, Abbott, may be liable under False 12 Claims Act if they did this. 13 Q. Okay. 14 A. And, and there's a number two. So by 15 itself, a manufacturer may be liable if they 16 provide pricing -- if government reimbursement 17 depends on pricing information it provided. 18 Q. Okay. So -- 19 A. They may be liable. 20 Q. Abbott understood that it may be liable 21 if it failed to report accurate and complete 22 information that was utilized by the government for</p>

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<p style="text-align: right;">Page 635</p> <p>1 reimbursement?</p> <p>2 MS. CITERA: Object to the form, outside the</p> <p>3 scope. I also caution you not to reveal anything --</p> <p>4 any privileged communications or analysis.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I mean, you're not reading the entire</p> <p>7 phrase here. It's -- Again, this is -- this is</p> <p>8 assertion -- this is guidance provided by the</p> <p>9 government on information that otherwise hadn't</p> <p>10 provided guidance on or it wouldn't be current</p> <p>11 guidance.</p> <p>12 Q. Okay. Let me ask it this way: The</p> <p>13 statement reflected on this page, was this Abbott's</p> <p>14 understanding of its obligation under the False</p> <p>15 Claims Act with regard to price reporting that it</p> <p>16 directly or indirectly made?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope. I also caution you not to reveal any</p> <p>19 privileged communications or analysis.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I think it's a reflection of what OIG is</p> <p>22 stating the requirements to be.</p>	<p style="text-align: right;">Page 637</p> <p>1 A. It identifies it as may be liable.</p> <p>2 Q. Well, did Abbott think that it wasn't</p> <p>3 liable?</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY THE WITNESS:</p> <p>6 A. You're asking for a legal conclusion.</p> <p>7 Q. What I'm asking for, sir, is did Abbott</p> <p>8 believe or understand that it was required to</p> <p>9 follow what is set forth on this page as a -- an</p> <p>10 obligation of a manufacturer under the False Claims</p> <p>11 Act?</p> <p>12 MS. CITERA: Objection to the form, outside</p> <p>13 the scope.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Abbott absolutely believed that it was</p> <p>16 obligated to follow the federal False Claims Act</p> <p>17 and any other healthcare compliance obligations.</p> <p>18 Q. Okay. And from 1991 through 2003, did</p> <p>19 Abbott follow this guidance that is set forth on</p> <p>20 this page as to its obligations under the False</p> <p>21 Claims Act?</p> <p>22 MS. CITERA: Same objections.</p>
<p style="text-align: right;">Page 636</p> <p>1 Q. Okay. But did Abbott follow the</p> <p>2 requirements set forth on this page?</p> <p>3 MS. CITERA: Same objections.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I don't know that they didn't.</p> <p>6 Q. Okay. Well, do you know that they did?</p> <p>7 A. Back to the testimony I gave last</p> <p>8 Wednesday, which is, this was an evolving</p> <p>9 environment. And once there was clearer guidance</p> <p>10 as to how particular provisions within a statute or</p> <p>11 regulations were being interpreted, Abbott would</p> <p>12 have taken that very seriously and would have</p> <p>13 evaluated its operations in connection with that</p> <p>14 guidance.</p> <p>15 Q. From 1991 through 2003, did Abbott comply</p> <p>16 with what is identified here as a manufacturer's</p> <p>17 obligations under the False Claims Act?</p> <p>18 A. Identifies it as a possible obligation.</p> <p>19 MS. CITERA: Objection to form, outside the</p> <p>20 scope.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. I'm sorry?</p>	<p style="text-align: right;">Page 638</p> <p>1 BY THE WITNESS:</p> <p>2 A. That answer requires a legal conclusion,</p> <p>3 now applying the facts of how Abbott did its --</p> <p>4 conducted its business against the Act, federal</p> <p>5 False Claims Act and reaching a conclusion whether</p> <p>6 or not it complied.</p> <p>7 Q. I'm asking whether what is outlined here</p> <p>8 -- Well, let me ask you, did Abbott with regard to</p> <p>9 prices that it directly or indirectly reported, did</p> <p>10 it ever knowingly or recklessly fail to report</p> <p>11 accurate and complete information concerning its</p> <p>12 discounts, rebates, free goods, upfront payments,</p> <p>13 coupons, goods in kind, free or reduced prices or</p> <p>14 services, grants, or other price concessions or</p> <p>15 similar benefits?</p> <p>16 MS. CITERA: I'm going to object to the form.</p> <p>17 It's clearly asking for a legal conclusion and</p> <p>18 beyond the scope.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. I'm not asking -- I'm asking for Abbott's</p> <p>21 practice.</p> <p>22 A. No, you're asking me did Abbott fail to</p>

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<p style="text-align: right;">Page 639</p> <p>1 do this. And if we failed to do it, I'd be</p> <p>2 evaluating the actions that we took against the</p> <p>3 scope of the statute and reaching a conclusion that</p> <p>4 we failed to adhere to the statute. If we did do</p> <p>5 it, I'd be taking the same evaluations of a</p> <p>6 different set of facts, applying it against the</p> <p>7 same set of statutes, and saying yes, we complied.</p> <p>8 So it's absolutely reaching a legal conclusion.</p> <p>9 Q. As a factual matter, did Abbott undertake</p> <p>10 the reporting obligations set forth on this page?</p> <p>11 MS. CITERA: Same objections.</p> <p>12 BY THE WITNESS:</p> <p>13 A. As a factual matter, Abbott conducted its</p> <p>14 business in compliance with healthcare compliance</p> <p>15 laws and regulations.</p> <p>16 Q. But did it follow what is set forth on</p> <p>17 this page?</p> <p>18 A. Whether you follow or --</p> <p>19 MS. CITERA: Object to the form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I'm sorry. I continue to believe whether</p>	<p style="text-align: right;">Page 641</p> <p>1 Q. Well, Abbott understood that the</p> <p>2 government -- that Medicare and Medicaid programs</p> <p>3 utilized AWP and, for Medicaid programs in some</p> <p>4 instances, WAC information for government</p> <p>5 reimbursement, correct?</p> <p>6 MS. CITERA: Objection to form, outside the</p> <p>7 scope.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Correct?</p> <p>10 A. I have read testimony where people within</p> <p>11 Abbott understood that AWP information was used in</p> <p>12 reimbursement.</p> <p>13 Q. And Abbott understood that list price</p> <p>14 information it reported to the price reporting</p> <p>15 compendia influenced how AWP was calculated,</p> <p>16 correct?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Abbott -- Again, reading the testimony</p> <p>21 that I did read, Abbott understood that the list</p> <p>22 information is the information that the compendia</p>
<p style="text-align: right;">Page 640</p> <p>1 we followed it, whether we adhered to it, whether</p> <p>2 we complied with it, whether we violated it, to get</p> <p>3 to that conclusion, I continue to have to reach a</p> <p>4 legal conclusion.</p> <p>5 Q. As Abbott sits here today, it is refusing</p> <p>6 to answer and identify whether or not it undertook</p> <p>7 what is set forth on this page?</p> <p>8 MS. CITERA: You're asking him for a legal</p> <p>9 conclusion.</p> <p>10 MS. ST. PETER-GRIFFITH: I am not, Toni. And</p> <p>11 quit coaching the witness.</p> <p>12 MS. CITERA: He said it long before I said it.</p> <p>13 Outside the scope.</p> <p>14 BY THE WITNESS:</p> <p>15 A. We assert -- My two statements which I</p> <p>16 believe are the two statements I can make regarding</p> <p>17 the question you've asked, Abbott complied, sought</p> <p>18 to comply, Abbott complied with the federal -- all</p> <p>19 laws, but specifically the healthcare compliance</p> <p>20 laws. But to make a determination of whether in</p> <p>21 its actual practice it lived up to that effort is a</p> <p>22 legal conclusion.</p>	<p style="text-align: right;">Page 642</p> <p>1 requested.</p> <p>2 Q. Did Abbott at all times from 1991 through</p> <p>3 2003 report accurate and complete information</p> <p>4 concerning its list prices?</p> <p>5 MS. CITERA: Object to the form, outside the</p> <p>6 scope.</p> <p>7 BY THE WITNESS:</p> <p>8 A. The answer to that requires a legal</p> <p>9 conclusion as to whether or not we did it</p> <p>10 completely and accurately.</p> <p>11 Q. In reporting its list prices, did Abbott</p> <p>12 ever identify to the pricing compendia the</p> <p>13 differences between its actual contract prices and</p> <p>14 its list prices?</p> <p>15 MS. CITERA: Objection to the form, outside</p> <p>16 the scope.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I don't have personal knowledge that they</p> <p>19 did that. I'm trying to recall the deposition</p> <p>20 testimony that I read, whether somebody within</p> <p>21 Abbott would have testified to that having</p> <p>22 occurred. And I don't -- I don't recall it at this</p>

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<p style="text-align: right;">Page 643</p> <p>1 moment.</p> <p>2 Q. Did Abbott ever report to the government</p> <p>3 the differences between its contract prices and its</p> <p>4 list prices from 1993 through 2003 for the subject</p> <p>5 drugs?</p> <p>6 MS. CITERA: Objection to the form, outside</p> <p>7 the scope.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't know that they did that.</p> <p>10 Q. Sir, did Abbott understand that its</p> <p>11 obligations under the False Claims Act and to</p> <p>12 comply with the false claims were not just</p> <p>13 obligations concerning what it -- concerning</p> <p>14 knowing violations of the False Claims Act but also</p> <p>15 reckless or inadvertent conduct in its price</p> <p>16 reporting?</p> <p>17 MS. CITERA: Object to the form, outside the</p> <p>18 scope. Also I'd caution you not to reveal any</p> <p>19 privileged communications or analysis.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Without being able to recite the OIG</p> <p>22 guidance in 2003, I would suggest that in 2003,</p>	<p style="text-align: right;">Page 645</p> <p>1 BY THE WITNESS:</p> <p>2 A. What does that have to do with</p> <p>3 compliance? Can you read the question again,</p> <p>4 please?</p> <p>5 (Record read as requested.)</p> <p>6 MS. CITERA: Same objections.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Which pricing, the list pricing? What</p> <p>9 were the categories of pricing in the question?</p> <p>10 (Record read as requested.)</p> <p>11 BY THE WITNESS:</p> <p>12 A. To the extent a hospital purchased a</p> <p>13 product at a published price, that would have gone</p> <p>14 into a hospital's cost reporting for its cost</p> <p>15 report.</p> <p>16 Q. Okay. What about in the Alt Site market?</p> <p>17 MS. CITERA: Same objections.</p> <p>18 BY THE WITNESS:</p> <p>19 A. It would be true to the extent Alt Site</p> <p>20 market was reimbursed on a DRG basis.</p> <p>21 Q. What about for non-DRG-based</p> <p>22 reimbursements?</p>
<p style="text-align: right;">Page 644</p> <p>1 Abbott would have had that understanding.</p> <p>2 Q. What about prior to 2003?</p> <p>3 MS. CITERA: Same objections and instruction.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Repeat, without knowing precisely what --</p> <p>6 specifically what that guidance was, if the</p> <p>7 guidance was not provided in the terms that you've</p> <p>8 described to me, they may not have understood that</p> <p>9 to be the interpretation of the federal False</p> <p>10 Claims Act.</p> <p>11 Q. Did Abbott ever seek clarification from</p> <p>12 the federal government concerning the federal False</p> <p>13 Claims Act?</p> <p>14 A. Not to my knowledge.</p> <p>15 MS. CITERA: Same objections.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Is there any pricing published directly</p> <p>18 or indirectly by Abbott from 1991 to 2003 upon</p> <p>19 which the reimbursement of Abbott's products was</p> <p>20 partly based?</p> <p>21 MS. CITERA: Objection to the form, outside</p> <p>22 the scope.</p>	<p style="text-align: right;">Page 646</p> <p>1 MS. CITERA: Same objections.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Reading deposition testimony, my</p> <p>4 understanding is that reimbursement was not tied to</p> <p>5 list price but rather AWP.</p> <p>6 Q. Okay. But Abbott had an understanding</p> <p>7 AWP was tied to list price, correct?</p> <p>8 MS. CITERA: Objection to form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. There were people in Abbott who</p> <p>12 understood that, yes.</p> <p>13 Q. How did Abbott go about satisfying the</p> <p>14 False Claims Act in publishing its catalog or list</p> <p>15 prices? And let's start from 1991 to 2000.</p> <p>16 MS. CITERA: Object to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. A similar answer to what I've given</p> <p>19 before, which is that the series of employees from</p> <p>20 managers to direct reports who were responsible for</p> <p>21 providing this information would be subject to</p> <p>22 complying with laws and they would attempt to</p>

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<p>1 comply with laws.</p> <p>2 Q. Did Abbott -- What about from 2002 to</p> <p>3 present?</p> <p>4 MS. CITERA: Same objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I think that's true in all instances.</p> <p>7 Q. Did Abbott take any steps to make sure</p> <p>8 that its catalog prices reflected the prices to</p> <p>9 providers?</p> <p>10 MS. CITERA: Object to the form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. You have brought to my attention a</p> <p>13 previous deposition, and it may not be relating to</p> <p>14 this question. But I'm understanding it to relate</p> <p>15 to this question, that Abbott took some action to</p> <p>16 -- HPD took some action to change its list price in</p> <p>17 the 2000/2001 time frame.</p> <p>18 Q. Okay. Other than that change in 2001 or</p> <p>19 prior to 2001 or the time period of that change in</p> <p>20 2001, did Abbott take any steps to make sure that</p> <p>21 its catalog prices reflected the prices paid by</p> <p>22 providers?</p>	<p>1 Q. Sir, if you could flip to Page 0395568 --</p> <p>2 A. 55.</p> <p>3 Q. 68?</p> <p>4 A. 68. Okay.</p> <p>5 MS. ST. PETER-GRIFFITH: Hold on just a</p> <p>6 second, please. Okay. If we could go back to that</p> <p>7 last question, and could you read back his answer</p> <p>8 to the last question?</p> <p>9 MS. CITERA: Can we just read the question and</p> <p>10 answer?</p> <p>11 MS. ST. PETER-GRIFFITH: Sure, that's fine.</p> <p>12 (Record read as requested.)</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Do you know if they did anything?</p> <p>15 MS. CITERA: Object to the form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Go back two questions before that. It's</p> <p>18 assuming that all Alt Site providers paid a catalog</p> <p>19 price, which I don't know to be true. But I don't</p> <p>20 know specifically what they did, no.</p> <p>21 Q. Well, I don't think it is assuming they</p> <p>22 all paid a catalog price. That's the point of the</p>
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<p>1 MS. CITERA: Objection to the form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. All providers?</p> <p>4 Q. Well, Alt Site providers.</p> <p>5 A. Catalog prices reflect the price paid by</p> <p>6 Alt Site providers? I would assume that some Alt</p> <p>7 Site providers paid a contract price.</p> <p>8 MR. ANDERSON: Objection, nonresponsive.</p> <p>9 MS. ST. PETER-GRIFFITH: Can you read back</p> <p>10 that answer?</p> <p>11 (Record read as requested.)</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Okay. So if Alt Site providers paid a</p> <p>14 contract price, what did Abbott do in trying to</p> <p>15 assure its complying with federal and state</p> <p>16 Medicare and Medicaid fraud and abuse statutes,</p> <p>17 what did Abbott do to ensure that its catalog</p> <p>18 prices reflected prices paid by providers?</p> <p>19 MS. CITERA: Object to the form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know what they did to ensure</p> <p>22 that.</p>	<p>1 question, sir, is what did Abbott do to ensure that</p> <p>2 its reported prices, which are its list or catalog</p> <p>3 prices, correlated or related to the prices</p> <p>4 actually paid by providers?</p> <p>5 MS. CITERA: Object to the form, outside the</p> <p>6 scope.</p> <p>7 BY THE WITNESS:</p> <p>8 A. The answer to the question is, I don't</p> <p>9 know. But I also don't know that the providers --</p> <p>10 the providers actually bought the product directly</p> <p>11 from Abbott. It's a complex distribution and</p> <p>12 distribution system within the healthcare world</p> <p>13 with wholesalers and distributors, so they may not</p> <p>14 have bought the product directly from Abbott at</p> <p>15 all.</p> <p>16 Q. Okay. Well, if they didn't buy the</p> <p>17 product directly from Abbott, did Abbott have an</p> <p>18 understanding that in order to comply with federal</p> <p>19 and state Medicare and Medicaid fraud and abuse</p> <p>20 laws that its direct or indirect reported prices</p> <p>21 needed to bear some relation to the prices paid by</p> <p>22 providers?</p>

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<p style="text-align: right;">Page 651</p> <p>1 MS. CITERA: Object to the form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Abbott had an understanding of the</p> <p>5 healthcare compliance laws, yes.</p> <p>6 Q. But did it have an understanding that in</p> <p>7 order to comply with federal and state Medicare and</p> <p>8 Medicaid laws, that its direct or indirect reported</p> <p>9 prices needed to bear some relation to the prices</p> <p>10 paid by providers?</p> <p>11 MS. CITERA: Object to the form. You're</p> <p>12 testifying now.</p> <p>13 MS. ST. PETER-GRIFFITH: No, I'm not. I'm</p> <p>14 asking him the question.</p> <p>15 MS. CITERA: Well, you're reaching legal</p> <p>16 conclusions and you're saying -- outside the scope.</p> <p>17 MR. ANDERSON: I move to strike the sidebar</p> <p>18 comments.</p> <p>19 BY THE WITNESS:</p> <p>20 A. There's an outstanding question. Can you</p> <p>21 please repeat it?</p> <p>22 (Record read as requested.)</p>	<p style="text-align: right;">Page 653</p> <p>1 you're evaluating its evaluation of its activities</p> <p>2 in relationship with what the law requires and</p> <p>3 reaching a conclusion whether or not it complied.</p> <p>4 Q. Well, did Abbott do anything to ensure</p> <p>5 that it was complying with the federal False Claims</p> <p>6 Act?</p> <p>7 MS. CITERA: Objection to the form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I rest on the testimony I've given</p> <p>10 previously.</p> <p>11 Q. Well, what did Abbott do to ensure, if</p> <p>12 anything, if it did anything, what did Abbott do to</p> <p>13 ensure that in complying with the federal False</p> <p>14 Claims Act, that its published list or catalog</p> <p>15 prices reflected prices paid by providers?</p> <p>16 MS. CITERA: Objection to the form, outside</p> <p>17 the scope.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I previously stated Abbott complied with</p> <p>20 laws. Abbott provided -- Abbott legal provided</p> <p>21 legal presentations on reviewing the federal False</p> <p>22 Claims Act and Medicare fraud and abuse laws and</p>
<p style="text-align: right;">Page 652</p> <p>1 MS. CITERA: Same objections.</p> <p>2 BY THE WITNESS:</p> <p>3 A. The difference between that question and</p> <p>4 other questions is you've asked previously did</p> <p>5 Abbott understand there was a relationship between</p> <p>6 list price and AWP. This is asking for a legal</p> <p>7 conclusion.</p> <p>8 Q. Oh, I don't think it is.</p> <p>9 MS. ST. PETER-GRIFFITH: If you could go back</p> <p>10 and reread the question, please.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. And, sir, I'd like you to answer the</p> <p>13 question.</p> <p>14 (Record read as requested.)</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. I'm asking about Abbott's understanding.</p> <p>17 A. Abbott's understanding in order --</p> <p>18 MS. CITERA: Same objections, object to the</p> <p>19 form and outside the scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Abbott's understanding in order to comply</p> <p>22 with laws is to reach a legal conclusion because</p>	<p style="text-align: right;">Page 654</p> <p>1 Safe Harbors, and it relied on its management</p> <p>2 structure from manager to direct reports to adhere</p> <p>3 to the requirements that were expected of it.</p> <p>4 Q. As you sit here today, as Abbott, what</p> <p>5 can you tell the jury Abbott did in order to ensure</p> <p>6 that its published list and catalog prices</p> <p>7 reflected prices paid by providers?</p> <p>8 MS. CITERA: Objection to the form, outside</p> <p>9 the scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. To the extent those provisions were</p> <p>12 understood and provided guidance to the industry,</p> <p>13 Abbott would have adhered to that guidance.</p> <p>14 Q. Well, at any time from 1991 until the</p> <p>15 publication of the OIG guidance, was Abbott at all</p> <p>16 confused about its obligations under the False</p> <p>17 Claims Act?</p> <p>18 A. Not to --</p> <p>19 MS. CITERA: Object to the form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Not to my knowledge.</p>

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<p>1 Q. Did Abbott ever seek clarification as to</p> <p>2 its obligations under the False Claims Act?</p> <p>3 MS. CITERA: Objection to the form, beyond the</p> <p>4 scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Clarification from whom?</p> <p>7 Q. From the federal government.</p> <p>8 A. Not to my knowledge.</p> <p>9 MS. CITERA: Same objections.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Then if Abbott wasn't confused as to its</p> <p>13 obligations and Abbott didn't need to seek guidance</p> <p>14 as to its obligations, what did Abbott do to ensure</p> <p>15 it complied with the federal False Claims Act with</p> <p>16 regard to publishing list and catalog prices that</p> <p>17 reflected prices paid by providers?</p> <p>18 MS. CITERA: Same objections.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I rely on my existing testimony.</p> <p>21 Q. Which testimony is that, sir?</p> <p>22 A. Of the compliance efforts that Abbott</p>	<p>1 Q. Well, did you have any understanding that</p> <p>2 Abbott executives have testified that catalog</p> <p>3 prices were unintended -- were unattended and were</p> <p>4 not set based upon prices paid by providers?</p> <p>5 MS. CITERA: Objection to the form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I have not seen that testimony.</p> <p>8 Q. As you sit here today, other than what</p> <p>9 you've testified to already, can you tell us</p> <p>10 anything about what Abbott did to ensure compliance</p> <p>11 with the federal False Claims Act from 1991 until</p> <p>12 2003?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I continue to rely on my existing</p> <p>16 testimony.</p> <p>17 Q. If we could turn to Page 0395568.</p> <p>18 A. Okay.</p> <p>19 Q. And this page concerns average wholesale</p> <p>20 price. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And it's also a continuation, it appears,</p>
Page 656	Page 658
<p>1 went through as an organization.</p> <p>2 Q. Well, I don't think you've testified as</p> <p>3 to what it did with regard to ensuring the</p> <p>4 correlation between its catalog prices and its</p> <p>5 prices paid by providers. So I'd like for you to</p> <p>6 explain to the jury what Abbott did in order to</p> <p>7 ensure such compliance.</p> <p>8 MS. CITERA: Object to the form, outside the</p> <p>9 scope to the extent you're asking for a legal</p> <p>10 conclusion.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I don't have anything to add to my</p> <p>13 testimony.</p> <p>14 Q. Well, did you review the testimony of</p> <p>15 Pete Karas in preparing for today's testimony?</p> <p>16 A. I did not.</p> <p>17 Q. Was Mr. Karas' testimony reasonably</p> <p>18 available to Abbott?</p> <p>19 MS. CITERA: Objection to the form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't have a reason to believe it</p> <p>22 wasn't.</p>	<p>1 of the risk areas previously identified?</p> <p>2 A. I see that.</p> <p>3 Q. Do you see the first bullet? It says,</p> <p>4 "The guidance states it is illegal for a</p> <p>5 manufacturer knowingly to establish or maintain a</p> <p>6 particular AWP if one purpose is to manipulate the</p> <p>7 spread to induce customers to purchase its</p> <p>8 products." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. At any time from 1991 to 2003, what did</p> <p>11 Abbott do to ensure compliance and verify that it</p> <p>12 did not knowingly establish or maintain a</p> <p>13 particular AWP for the purpose of manipulating the</p> <p>14 spread?</p> <p>15 MS. CITERA: Objection to the form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Same round of responses from before.</p> <p>18 Abbott -- I rely on the testimony previously as to</p> <p>19 what we did to ensure compliance. My understanding</p> <p>20 of this guidance is that this was fresh information</p> <p>21 as of 2003 provided for the first time by OIG.</p> <p>22 Q. Well, did Abbott -- was Abbott, prior to</p>

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<p style="text-align: right;">Page 659</p> <p>1 the issuance of this guidance, at any time confused 2 about what its obligations were with regard to AWP? 3 MS. CITERA: Objection to the form. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. From 1991 until the publication of the 6 guidance? 7 A. Not to my knowledge. 8 MS. CITERA: Objection to the form, outside 9 the scope. 10 BY THE WITNESS: 11 A. Sorry. Not to my knowledge. 12 Q. What did Abbott do to review its AWP 13 reporting practices and methodologies to confirm 14 that marketing considerations did not influence 15 that process? 16 MS. CITERA: Objection to the form. I would 17 also caution you not to reveal any privileged 18 discussions or analysis. 19 BY THE WITNESS: 20 A. My understanding from reading deposition 21 testimony is that Abbott did not provide AWP 22 information, and it did not publish AWP.</p>	<p style="text-align: right;">Page 661</p> <p>1 review its list price reporting practices and 2 methodologies to confirm that marketing 3 considerations did not influence the process? 4 MS. CITERA: Objection to the form. 5 BY THE WITNESS: 6 A. I don't know. 7 Q. The next bullet reads, "The guidance 8 states that pharmaceutical manufacturers generally 9 report either AWP or pricing information used by 10 commercial price reporting services to determine 11 AWP." Do you see that? 12 A. I do. 13 Q. And have we established that Abbott fits 14 into that latter category, correct, from 1991 to 15 2003? 16 MS. CITERA: Objection to the form, outside 17 the scope. 18 BY THE WITNESS: 19 A. Based on testimony I read, I would 20 believe -- I believe it's the latter category, 21 providing information to commercial price reporting 22 services.</p>
<p style="text-align: right;">Page 660</p> <p>1 Q. But Abbott had an understanding that its 2 list prices had a correlation to the AWP as they 3 were calculated by the pricing compendia, correct? 4 MS. CITERA: Objection to the form, outside 5 the scope. 6 BY THE WITNESS: 7 A. Reading the deposition testimony that I 8 read, there were people within Abbott who 9 understood that list price was utilized by the 10 compendia in preparing or publishing AWP. 11 Q. From 1991 until 2003, what steps, if any, 12 did Abbott undertake to review their AWP reporting 13 practices and methodologies to confirm that 14 marketing considerations did not influence the 15 process? 16 MS. CITERA: Object to the form, same caution 17 regarding privilege. 18 BY THE WITNESS: 19 A. Reiterate that they didn't have AWP 20 reporting. They provided list price. 21 Q. Okay. Then list price reporting. What 22 did Abbott do from 1991 until 2003 to review -- to</p>	<p style="text-align: right;">Page 662</p> <p>1 Q. Did Abbott also report WAC prices? 2 MS. CITERA: Objection to the form -- well, 3 it's outside the scope. 4 BY THE WITNESS: 5 A. I don't know. 6 Q. If Abbott reported WAC prices to the 7 price reporting compendia, would Abbott expect that 8 its WAC prices would be accurate and consistent? 9 MS. CITERA: Objection to the form, outside 10 the scope. 11 MS. ST. PETER-GRIFFITH: I'll just say 12 "accurate" and leave off the "consistent." 13 MS. CITERA: Same objections. 14 BY THE WITNESS: 15 A. Abbott would expect that any pricing 16 information it provided would be accurate. 17 Q. Okay. What did Abbott do to verify that 18 the pricing that it reported to the price reporting 19 compendia that in turn may have been relied upon by 20 government payors in providing reimbursement was 21 accurate? 22 MS. CITERA: Objection to the form and outside</p>

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<p style="text-align: right;">Page 663</p> <p>1 the scope.</p> <p>2 BY THE WITNESS:</p> <p>3 A. In terms of compliance efforts, I don't</p> <p>4 have any additional information beyond what I've</p> <p>5 already provided that I am aware of.</p> <p>6 Q. Sir, if you could flip to Page 0395579 --</p> <p>7 A. Okay.</p> <p>8 Q. Okay. This is a hypothetical that</p> <p>9 presumably during the course of the presentation</p> <p>10 was discussed; is that fair?</p> <p>11 A. That seems fair.</p> <p>12 Q. Okay. At the bottom where it says</p> <p>13 Hypothetical No. 3, it says, "Contact Ginnie," with</p> <p>14 a J, "Tobiason in the ethics and compliance with</p> <p>15 questions on reimbursement." Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Was Ms. Tobiason also the contact person</p> <p>18 to answer questions concerning whether or not</p> <p>19 certain conduct constituted spread marketing?</p> <p>20 MS. CITERA: Objection to the form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. At this time in 2003?</p>	<p style="text-align: right;">Page 665</p> <p>1 go to get it.</p> <p>2 MS. ST. PETER-GRIFFITH: Before I move on to</p> <p>3 my next question, we have less than five minutes on</p> <p>4 the tape. So why don't we take a very brief break.</p> <p>5 THE VIDEOGRAPHER: Going off the record at</p> <p>6 3:54 p.m.</p> <p>7 (A short break was had.)</p> <p>8 THE VIDEOGRAPHER: Beginning of Videotape No.</p> <p>9 6 in the deposition of Mr. Fishman. Back on the</p> <p>10 record at 4:00 p.m.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Mr. Fishman, my counsel for the realtor</p> <p>13 does have some questions for you. I know we're</p> <p>14 winding down on our last probably 30 minutes of</p> <p>15 your testimony.</p> <p>16 I'd like to refer you, though, to</p> <p>17 0395579.</p> <p>18 A. Hypothetical 3?</p> <p>19 Q. Yeah, Hypothetical 3?</p> <p>20 A. Yes.</p> <p>21 Q. What was Abbott's understanding of the</p> <p>22 Antikickback Statute implications associated with</p>
<p style="text-align: right;">Page 664</p> <p>1 Q. Yes.</p> <p>2 A. I'm not certain of the scope of her</p> <p>3 responsibilities.</p> <p>4 Q. Well, from the context of this page,</p> <p>5 could that be inferred?</p> <p>6 MS. CITERA: Object to the form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. She had -- She had responsibility from</p> <p>9 OEC on reimbursement matters generally, so it's</p> <p>10 conceivable that it included spread and marketing</p> <p>11 the spread.</p> <p>12 Q. Well, would you expect that Ginnie</p> <p>13 Tobiason in her capacity as a reimbursement ethics</p> <p>14 and compliance contact person, that she would be</p> <p>15 familiar with what conduct is acceptable and not</p> <p>16 acceptable in terms of spread marketing?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I can't state what she knew. But I think</p> <p>21 it's reasonable to assume that she had familiarity</p> <p>22 or if didn't have personal knowledge, knew where to</p>	<p style="text-align: right;">Page 666</p> <p>1 spread or spread marketing?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope. I also caution you not to reveal any</p> <p>4 privileged communications or analysis.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Having not prepared this, I have to -- I</p> <p>7 don't know precisely what issues they would have</p> <p>8 been considered by raising this point.</p> <p>9 Q. Did you -- What information did you</p> <p>10 review that was reasonably available to Abbott to</p> <p>11 understand what the Antikickback -- to understand</p> <p>12 what Abbott's understanding of the Antikickback</p> <p>13 implications of marketing the spread?</p> <p>14 A. Having not seen this document until last</p> <p>15 night, from last night until today, I did not ask</p> <p>16 anybody as a representative of Abbott what they may</p> <p>17 have been concerned with, also adding that Cliff</p> <p>18 cribbed this mostly from Testa, Hurwitz. I don't</p> <p>19 know that he personally was concerned. He was</p> <p>20 presenting a presentation that pretty much was</p> <p>21 provided to him.</p> <p>22 Q. Well, but the presentation was made to</p>

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<p style="text-align: right;">Page 667</p> <p>1 presumably within Abbott, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And well, if it was -- and if this</p> <p>4 hypothetical was presented, what concern did Abbott</p> <p>5 discuss with its employees about the spread</p> <p>6 marketing and the Antikickback implications of</p> <p>7 spread marketing?</p> <p>8 A. I did not --</p> <p>9 MS. CITERA: Object to the form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I did not speak with Cliff subsequent to</p> <p>12 reading this last night to know what he may have</p> <p>13 said on this slide.</p> <p>14 Q. Do you think you can do a little further</p> <p>15 investigation to respond to the question?</p> <p>16 MS. ST. PETER-GRIFFITH: Toni, I know we've</p> <p>17 given Mr. Fishman some research assignments, but</p> <p>18 we're all operating on short notice of these</p> <p>19 documents. So if I could ask that that be done.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Cliff left Abbott Friday. I can still</p> <p>22 reach him. I should be able to reach him. He left</p>	<p style="text-align: right;">Page 669</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did Abbott have an understanding that</p> <p>3 there were Antikickback Statute implications with</p> <p>4 regard to the spread which is defined here as the</p> <p>5 amount of reimbursement as compared to the cost of</p> <p>6 the product to providers?</p> <p>7 MS. CITERA: Object to the form, outside the</p> <p>8 scope.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I would have to ask -- I would have to</p> <p>11 ask Cliff about this, but I don't know -- I don't</p> <p>12 necessarily -- I don't necessarily equate issues</p> <p>13 with implication.</p> <p>14 Q. Well, do you know why the Antikickback</p> <p>15 Statute is discussed here?</p> <p>16 A. No. That refers back to my answer</p> <p>17 previously.</p> <p>18 Q. What was Abbott's understanding from 1991</p> <p>19 to 2003 of what market the spread -- what conduct</p> <p>20 constituted marketing the spread?</p> <p>21 MS. CITERA: Objection to the form, outside</p> <p>22 the scope.</p>
<p style="text-align: right;">Page 668</p> <p>1 Abbott to take a position as general counsel at a</p> <p>2 small company.</p> <p>3 Q. What conduct did Abbott understood -- I'm</p> <p>4 Sorry. Strike that.</p> <p>5 Abbott understood that there were spread</p> <p>6 marketing implications between the amount of</p> <p>7 reimbursement and cost of the product, right --</p> <p>8 MS. CITERA: Object to the form.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. -- to providers?</p> <p>11 MS. CITERA: Object to the form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Spread implications regarding?</p> <p>14 Q. Marketing the spread.</p> <p>15 A. Implications under the --</p> <p>16 Q. I'm sorry. Under the Antikickback</p> <p>17 Statute.</p> <p>18 MS. CITERA: The question has been really</p> <p>19 broken up. I'm wondering if you could read it or</p> <p>20 repeat it.</p> <p>21 MS. ST. PETER-GRIFFITH: Sure. Why don't I</p> <p>22 try and rephrase it.</p>	<p style="text-align: right;">Page 670</p> <p>1 BY THE WITNESS:</p> <p>2 A. Based on the -- some of the deposition</p> <p>3 testimony that I read, I believe certain Abbott</p> <p>4 employees understood that marketing the spread</p> <p>5 meant talking to customers about the difference</p> <p>6 between the reimbursement amounts of products in</p> <p>7 relationship to the cost.</p> <p>8 Q. Okay. Did that include providing AWP</p> <p>9 information? Did the provision of AWP information</p> <p>10 by Abbott employees to various Abbott customers, be</p> <p>11 they through the sales force or to GPOs, did Abbott</p> <p>12 have an understanding that that could constitute</p> <p>13 marketing the spread?</p> <p>14 MS. CITERA: Object to the form, outside the</p> <p>15 scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I wouldn't reach that conclusion. I</p> <p>18 think Abbott recognized and had a practice not to</p> <p>19 provide AWP information and, as testified, people</p> <p>20 recognized -- certain people recognized a</p> <p>21 relationship between the list price information</p> <p>22 provided and AWP.</p>

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<p style="text-align: right;">Page 671</p> <p>1 Q. Well, if certain people understood that, 2 Abbott then understood that there was that 3 relationship, correct? 4 MS. CITERA: Object to the form, outside the 5 scope. 6 BY THE WITNESS: 7 A. The relationship between list price and 8 AWP? 9 Q. Yes. 10 A. Yes. 11 Q. Okay. And did Abbott also have an 12 understanding that spread marketing -- I'm sorry. 13 Did Abbott also understand that the provision of 14 AWP information to Abbott customers may constitute 15 spread marketing? 16 MS. CITERA: Objection to the form, outside 17 the scope. 18 BY THE WITNESS: 19 A. Recalling deposition testimony, I think 20 there were people who understood that providing -- 21 by providing AWP information to customers, that 22 customers could obtain the spread information.</p>	<p style="text-align: right;">Page 673</p> <p>1 sorry. Strike that. 2 Why, if the practice prohibited the 3 discussion of AWP information -- Strike that. Let 4 me see if I can do this. 5 Why would Abbott's practice, why would 6 Abbott prohibit the discussion of AWP information 7 if that discussion did not constitute spread 8 marketing? 9 MS. CITERA: Object to the form, outside the 10 scope. 11 BY THE WITNESS: 12 A. That's a conclusion that I did not read 13 testimony about. And, again, as I reiterated 14 Wednesday and today was, it was not Abbott's 15 practice to provide AWP information but rather to 16 talk about the attributes and qualities of Abbott 17 and its products. 18 Q. Could, from Abbott's viewpoint, the 19 provision of AWP information to customers 20 constitute spread marketing? 21 MS. CITERA: Objection to the form, outside 22 the scope.</p>
<p style="text-align: right;">Page 672</p> <p>1 Q. Okay. So is that a yes, that Abbott had 2 an understanding that the provision of AWP 3 information to customers may constitute spread 4 marketing? 5 MS. CITERA: Objection to the form, outside 6 the scope. 7 BY THE WITNESS: 8 A. I didn't reach that conclusion. You're 9 taking it one step further, which ... 10 Q. Okay. Well, why didn't Abbott have that 11 understanding, then? 12 MS. CITERA: Objection to the form, outside 13 the scope. 14 BY THE WITNESS: 15 A. Because what they -- by providing AWP 16 information to customers, again, which was against 17 the understood practice and ultimately against the 18 written policy, would be provide one tool to a 19 customer. And what that customer did with that 20 tool, they wouldn't necessarily know. 21 Q. Well, why would spread -- or why would 22 the discussion of AWP information under the -- I'm</p>	<p style="text-align: right;">Page 674</p> <p>1 BY THE WITNESS: 2 A. It could provide -- It could provide, if 3 it were provided, could provide a component to what 4 is needed to establish spread. 5 Q. So is that a yes? 6 MS. CITERA: Object to the form, outside the 7 scope. 8 BY THE WITNESS: 9 A. It's not a straightforward yes-or-no 10 answer. I gave you the answer that I think is 11 appropriate. 12 Q. Well, then, was it Abbott's understanding 13 that the provision of AWP information could in part 14 be considered spread marketing because it provides 15 a component of the information that the client 16 could use to calculate the spread? 17 MS. CITERA: Object to the form, outside the 18 scope. 19 BY THE WITNESS: 20 A. It was one essential component of spread 21 marketing. 22 Q. Okay. So the provision of AWP</p>

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<p>1 information, Abbott understood was one of the</p> <p>2 essential components of spread marketing?</p> <p>3 MS. CITERA: Objection to the form, outside</p> <p>4 the scope.</p> <p>5 BY THE WITNESS:</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. Okay.</p> <p>8 MS. ST. PETER-GRIFFITH: Toni, I'm going to</p> <p>9 pass the witness in just a second, but I just need</p> <p>10 to establish the record. Are you instructing the</p> <p>11 witness not to answer any questions concerning</p> <p>12 Topic 7, Sub I?</p> <p>13 MS. CITERA: Yeah. I thought we went through</p> <p>14 that already.</p> <p>15 MS. ST. PETER-GRIFFITH: I didn't -- I wanted</p> <p>16 to make clear, I don't think that we established</p> <p>17 you were instructing him not to answer. But you're</p> <p>18 instructing him not to answer any questions --</p> <p>19 MS. CITERA: He's not prepared to testify</p> <p>20 about that area, and he hasn't been designated for</p> <p>21 that area. So yes.</p> <p>22 MS. ST. PETER-GRIFFITH: Well, I'm talking</p>	<p>1 BY THE WITNESS:</p> <p>2 A. What time frame are we talking about?</p> <p>3 Q. From 1991 to 2003.</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY THE WITNESS:</p> <p>6 A. My understanding is Abbott has a catalog</p> <p>7 price, yes.</p> <p>8 Q. And those are published by Abbott,</p> <p>9 correct?</p> <p>10 MS. CITERA: Same objections.</p> <p>11 BY THE WITNESS:</p> <p>12 A. To my knowledge, yes.</p> <p>13 Q. Does Abbott set its catalog a/k/a list</p> <p>14 prices based on analysis of prices paid by</p> <p>15 providers?</p> <p>16 MS. CITERA: Object to the form, outside of</p> <p>17 scope.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I have no knowledge regarding that</p> <p>20 matter.</p> <p>21 Q. I think just a few moments ago you</p> <p>22 testified that through the course of preparing to</p>
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<p>1 about -- Can you look at 7(I) and make sure we're</p> <p>2 talking about the same --</p> <p>3 MS. CITERA: The TAP one?</p> <p>4 MS. ST. PETER-GRIFFITH: The TAP one, yeah.</p> <p>5 MS. CITERA: Yeah.</p> <p>6 MS. ST. PETER-GRIFFITH: I just wanted to make</p> <p>7 the record so that's preserved.</p> <p>8 At this time, subject to the outstanding</p> <p>9 issues that we've discussed here today, subject to</p> <p>10 the subsequent production of additional compliance</p> <p>11 materials and the resolution of Topic 7, at this</p> <p>12 time, Topic 7, Sub 1, at the time the United States</p> <p>13 passes the witness to Realtor's counsel.</p> <p>14 EXAMINATION</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Mr. Fishman, my name is Jarrett Anderson.</p> <p>17 I represent the Realtor in this case. I'll try to</p> <p>18 move quickly. I realize it's late in the day.</p> <p>19 Does Abbott publish list prices that are</p> <p>20 also known as catalog prices?</p> <p>21 MS. CITERA: Object to the form, outside the</p> <p>22 scope.</p>	<p>1 testify and reading transcripts and what have you,</p> <p>2 you've become aware that there is now, in fact, a</p> <p>3 policy in place regarding the setting of catalog</p> <p>4 prices, correct?</p> <p>5 MS. CITERA: Objection to the form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. There is a policy regarding</p> <p>8 reimbursement, yes, reimbursement pricing</p> <p>9 information and support.</p> <p>10 Q. Right. And specifically there's a policy</p> <p>11 in place about how the catalog or list price will</p> <p>12 be set by Abbott, correct?</p> <p>13 MS. CITERA: Object to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. To answer that precisely, I'd request to</p> <p>16 review that policy again.</p> <p>17 Q. Well, I'm not actually going to ask you</p> <p>18 about the details of the policy. I'm just asking,</p> <p>19 do you understand there is a policy?</p> <p>20 MS. CITERA: Object to the form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. To state categorically, I would need to</p>

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<p>1 see that policy again to confirm that that's true.</p> <p>2 Q. All right. Do we have a copy of that</p> <p>3 policy in a prior deposition exhibit, the list</p> <p>4 price setting policy?</p> <p>5 MS. ST. PETER-GRIFFITH: Yes.</p> <p>6 THE WITNESS: Reimbursement policy.</p> <p>7 MS. ST. PETER-GRIFFITH: It's this one.</p> <p>8 THE WITNESS: It was a six-, eight-page</p> <p>9 document.</p> <p>10 MS. ST. PETER-GRIFFITH: It was the last one,</p> <p>11 and unfortunately they didn't ship the original</p> <p>12 exhibits back here.</p> <p>13 MS. CITERA: The last -- This is HPD</p> <p>14 procedure.</p> <p>15 MS. ST. PETER-GRIFFITH: Yeah.</p> <p>16 MS. CITERA: No, no, no, that's not it.</p> <p>17 MS. ST. PETER-GRIFFITH: It's not part of</p> <p>18 Exhibit 1, though.</p> <p>19 MR. ANDERSON: That's about the disclosure of</p> <p>20 reimbursement information.</p> <p>21 MS. CITERA: Well, that's the one he's talking</p> <p>22 about.</p>	<p>1 testify on behalf of the corporation, that you've</p> <p>2 gained an understanding that in 2001, roughly,</p> <p>3 there was a change in the way that Abbott set and</p> <p>4 published catalog a/k/a list prices, correct?</p> <p>5 A. I didn't say that. I stated that I</p> <p>6 learned that through questioning in my deposition</p> <p>7 last Wednesday.</p> <p>8 Q. Right. Did you follow up on that since,</p> <p>9 you know, the past few days?</p> <p>10 A. I did not.</p> <p>11 Q. Okay. Do you know why Abbott changed its</p> <p>12 list or catalog price policies?</p> <p>13 A. I do not.</p> <p>14 Q. Do you know whether or not the change in</p> <p>15 Abbott's setting and publication of catalog a/k/a</p> <p>16 list prices in 2001 was any kind of remedial</p> <p>17 measure?</p> <p>18 MS. CITERA: Object to the form, outside the</p> <p>19 scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Remedial measure regarding? I mean,</p> <p>22 "remedial measure," that's a very broad question.</p>
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<p>1 MR. ANDERSON: No, I'm talking about the --</p> <p>2 MS. ST. PETER-GRIFFITH: I don't think we have</p> <p>3 it here, Jarrett.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Okay. Well, if you don't know, I guess I</p> <p>6 can deal with that. But I'm asking about the</p> <p>7 setting of list prices. I'm not necessarily</p> <p>8 talking about the disclosure of reimbursement</p> <p>9 information, okay?</p> <p>10 A. I'm not -- I'm not certain that there is</p> <p>11 a specific -- a separate policy dealing with</p> <p>12 setting of list prices. What I was thinking was</p> <p>13 that it was part of a pricing policy contained --</p> <p>14 having several subsections within it, and that's</p> <p>15 the part that I can't recall. If it's a separate</p> <p>16 policy, I can't specifically recall that. But I'd</p> <p>17 be happy to review it.</p> <p>18 Q. I will tell you that there is a separate</p> <p>19 policy, and we've seen it. And we've had questions</p> <p>20 of witnesses about it. But I think we can maneuver</p> <p>21 around this.</p> <p>22 You mentioned that in your preparation to</p>	<p>1 Remedial in how?</p> <p>2 Q. Well, I'm asking you. Do you have any</p> <p>3 understanding of the nature of the change in how</p> <p>4 catalog a/k/a list prices were set and published?</p> <p>5 A. I do not have any personal knowledge.</p> <p>6 Q. But do you have any corporate knowledge?</p> <p>7 A. Based on the review of the testimony and</p> <p>8 review of people I spoke with, I do not have any</p> <p>9 knowledge.</p> <p>10 Q. Okay. And to the extent there has been</p> <p>11 testimony in this case as well as persons working</p> <p>12 at Abbott that know about the reasoning behind the</p> <p>13 price changes in 2001, that information was</p> <p>14 reasonably available to the corporation, correct?</p> <p>15 MS. CITERA: Object to the form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. To the extent that information -- to the</p> <p>18 extent there was a specific reasoning for it that's</p> <p>19 in line with what you're asking, it would be</p> <p>20 available to the corporation because someone within</p> <p>21 the corporation would know it.</p> <p>22 Q. You understand that you're here on behalf</p>

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<p style="text-align: right;">Page 683</p> <p>1 of the corporation concerning compliance matters, 2 correct? 3 A. I do understand that. 4 Q. From your perspective as the corporate 5 designee of Abbott on compliance matters, what is a 6 catalog or list price? 7 MS. CITERA: Objection to the form, outside 8 the scope. 9 BY THE WITNESS: 10 A. I'm not sure how answering that question 11 is in my scope of a compliance deponent. My 12 general understanding is that catalog price is the 13 price that's published in Abbott's product catalog. 14 Q. From your perspective as the designee 15 concerning compliance matters, what duties, if any, 16 as a corporation does Abbott owe in setting and 17 publishing catalog also known as list prices? 18 MS. CITERA: Object to the form, outside the 19 scope. I'd also caution you not to reveal any 20 privileged communications or analysis. 21 BY THE WITNESS: 22 A. I think answering that question duty,</p>	<p style="text-align: right;">Page 685</p> <p>1 or to make any type of legal conclusions or 2 analyses here. Whether or not -- it seems to me 3 you're asking him prospectively to make that legal 4 analysis. He's not here to do that. 5 MR. ANDERSON: Well, the Court can take that 6 up at a later date. Your objection has been noted 7 and preserved. 8 BY THE WITNESS: 9 A. I believe Abbott had a duty to comply 10 with healthcare compliance laws in all respects. 11 Q. Okay. Do those duties with respect to 12 the setting and publication of catalog or list 13 prices in connection with healthcare laws require 14 Abbott to publish catalog a/k/a list prices that 15 are at least in part based on the prices being paid 16 by providers? 17 MS. CITERA: Object to the form, outside the 18 scope. 19 BY THE WITNESS: 20 A. I believe that question is requiring me 21 to render a legal opinion. 22 Q. Well, let's -- Your counsel's rendered an</p>
<p style="text-align: right;">Page 684</p> <p>1 duty to whom? If it's a duty under a statute, then 2 you're asking me to reach a legal conclusion. 3 Q. Are you taking the position that you're 4 not required to answer the question? 5 A. I'm -- You've objected to so many, I'm 6 waiting for you. 7 MS. CITERA: Yeah. 8 BY THE WITNESS: 9 A. I'm taking the position that the response 10 in answer to your question would require me to 11 offer a legal opinion, which I think is privileged. 12 Q. Well, let me say that I'm not asking you 13 for some type of privileged communication, nor am I 14 asking for core attorney work product. I'm asking 15 for corporate testimony from Abbott's designee 16 concerning compliance matters. 17 And my simple question to you is, sir, 18 does Abbott owe any duties with respect to its 19 setting and publication of catalog, also known as 20 list, prices? 21 MS. CITERA: I mean, I would just object that 22 he is not being offered to testify as to legal --</p>	<p style="text-align: right;">Page 686</p> <p>1 objection, and the Court can rule on that at a 2 later date. But for now I do need your testimony 3 to that question. 4 MS. CITERA: He doesn't have to provide a 5 legal opinion. 6 MR. ANDERSON: But there's no finding it is a 7 legal opinion, Toni; hence the reason why we need 8 the testimony. We'll let the judge decide. 9 MS. CITERA: He's not here to testify as to 10 duties. I mean, that's a legal analysis. He's not 11 here to do that. He's here to testify about facts. 12 MR. ANDERSON: Okay. I can address this. 13 BY MR. ANDERSON: 14 Q. Sir, as the designee on compliance 15 matters for the corporation, can you explain to the 16 judge and jury Abbott's view, not your personal 17 legal analysis, rather, Abbott's corporate view of 18 the duties, if any, that it owes with respect to 19 the setting and publication of catalog also known 20 as list prices? 21 MS. CITERA: Same objections, outside the 22 scope, object to the form.</p>

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<p style="text-align: right;">Page 687</p> <p>1 BY THE WITNESS:</p> <p>2 A. Pretty much the same answer, which is</p> <p>3 Abbott, personally or as Abbott, Abbott has an</p> <p>4 obligation to comply with all healthcare compliance</p> <p>5 laws. A determination, whether it's me speaking as</p> <p>6 an attorney or Abbott speaking, a statement as to</p> <p>7 whether Abbott's actions under a set of statutes</p> <p>8 adhere to that duty is a legal conclusion.</p> <p>9 Q. Sir, does Abbott believe that any laws</p> <p>10 cause Abbott to have a duty to publish catalog or</p> <p>11 list prices which reflect the prices paid by</p> <p>12 providers purchasing Abbott drugs?</p> <p>13 MS. CITERA: Same objections.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I think it's the same question phrased a</p> <p>16 different way. You're asking me at the back end,</p> <p>17 asked to evaluate what laws would apply to that set</p> <p>18 of conduct. Again, whether it applies and is</p> <p>19 adhered to is a legal conclusion.</p> <p>20 Q. Sir, I'm asking you Abbott's view. I'm</p> <p>21 not asking you for your legal conclusion.</p> <p>22 Are you telling me -- Are you telling me</p>	<p style="text-align: right;">Page 689</p> <p>1 reflect prices paid by providers?</p> <p>2 MS. CITERA: Same objections.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Abbott has an obligation to comply with</p> <p>5 all laws.</p> <p>6 Q. That's not my question. Objection,</p> <p>7 nonresponsive.</p> <p>8 Does Abbott believe that it has a duty to</p> <p>9 publish catalog or list prices that reflect the</p> <p>10 prices paid by providers?</p> <p>11 MS. CITERA: Objection to the form, outside</p> <p>12 the scope.</p> <p>13 BY THE WITNESS:</p> <p>14 A. To the extent there are laws regarding</p> <p>15 publishing list price and catalog price, Abbott</p> <p>16 would have an obligation to adhere to those laws.</p> <p>17 Q. Does Abbott believe those laws require</p> <p>18 such an obligation?</p> <p>19 MS. CITERA: Objection to form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. That's the part I -- That's the part I</p>
<p style="text-align: right;">Page 688</p> <p>1 that Abbott's only view as a corporation on this</p> <p>2 issue is a legal conclusion reached by counsel?</p> <p>3 A. On what issue?</p> <p>4 MS. CITERA: Object to the form, outside the</p> <p>5 scope.</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. Does Abbott have a corporate position on</p> <p>8 whether or not any law requires it to publish</p> <p>9 catalog also known as list prices which reflect the</p> <p>10 prices actually paid by providers purchasing Abbott</p> <p>11 drugs?</p> <p>12 MS. CITERA: Object to the form, outside the</p> <p>13 scope.</p> <p>14 BY THE WITNESS:</p> <p>15 A. You're asking me to evaluate an infinite</p> <p>16 set of laws and answer the question as to whether</p> <p>17 any of those laws, one, applies to Abbott; two,</p> <p>18 applies to Abbott in its pricing information; and,</p> <p>19 three, whether the actions that Abbott would or</p> <p>20 wouldn't do follow those laws.</p> <p>21 Q. Does Abbott have a position on whether or</p> <p>22 not it has duties to publish catalog prices that</p>	<p style="text-align: right;">Page 690</p> <p>1 believe you're now asking me to connect dots and</p> <p>2 reach a legal conclusion.</p> <p>3 Q. Okay.</p> <p>4 A. Whether in my own capacity or as Abbott.</p> <p>5 Q. Whether or not that is a legal</p> <p>6 conclusion, the judge will rule upon that at a</p> <p>7 later date. I would like to know whether Abbott</p> <p>8 has a position. Can you answer the question?</p> <p>9 MS. CITERA: Same objections.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I stand by my existing testimony.</p> <p>12 Q. So you're refusing to answer the</p> <p>13 question? You realize you haven't been instructed</p> <p>14 by your counsel not to answer. But you, as Joe</p> <p>15 Fishman, corporate designee, are choosing not to</p> <p>16 answer.</p> <p>17 A. I'm not choosing not to answer. I'm</p> <p>18 answering in a way that's not satisfying you.</p> <p>19 Q. No, sir, you're not answering. You're</p> <p>20 openly saying you're not answering. You're saying</p> <p>21 it calls for a legal conclusion.</p> <p>22 Absent an instruction from your counsel</p>

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<p style="text-align: right;">Page 691</p> <p>1 Ms. Citera, can you answer the question?</p> <p>2 MS. CITERA: He is not being tendered here to</p> <p>3 provide a legal analysis. A duty -- whether</p> <p>4 someone has a duty is inherently a legal analysis.</p> <p>5 He's not here to provide that kind of testimony.</p> <p>6 MR. ANDERSON: I'm not asking him to do the</p> <p>7 analysis. I'm asking him if Abbott's understanding</p> <p>8 of the duty is it must publish prices that are</p> <p>9 based on prices paid. That's all I'm asking. It's</p> <p>10 a very straightforward question. Either Abbott has</p> <p>11 the position or they don't.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Sir, does Abbott have a position about</p> <p>14 the publication of catalog or list prices being</p> <p>15 based on prices paid?</p> <p>16 MS. CITERA: Objection to the form, outside</p> <p>17 the --</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. It's matter of a fact. You either as a</p> <p>20 corporation do have it or you don't. Do you have</p> <p>21 that position?</p> <p>22 MS. CITERA: Same objection.</p>	<p style="text-align: right;">Page 693</p> <p>1 analysis. You're clearly asking for a legal</p> <p>2 analysis.</p> <p>3 MS. ST. PETER-GRIFFITH: Are you going to</p> <p>4 provide an instruction, Toni, for him not to</p> <p>5 answer?</p> <p>6 MS. CITERA: Don't answer it. He doesn't have</p> <p>7 to answer it.</p> <p>8 MR. ANDERSON: Okay. I want that question and</p> <p>9 that instruction certified, and we will be taking</p> <p>10 that up at the appropriate time with the Court.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Mr. Fishman, do you -- does it stand to</p> <p>13 reason to you as the corporate designee that the</p> <p>14 reason Abbott changed the way it set and published</p> <p>15 catalog prices in 2001 and based those prices on</p> <p>16 prices paid by providers is the way they had</p> <p>17 published them for years and years before was</p> <p>18 misleading?</p> <p>19 MS. CITERA: Object to the form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Does it stand to reason? I can't state</p>
<p style="text-align: right;">Page 692</p> <p>1 BY THE WITNESS:</p> <p>2 A. To the -- same answer, one of the same</p> <p>3 answers I've given previously, which is one of the</p> <p>4 angles which you're asking the questions, to the</p> <p>5 extent the laws address publishing list price and</p> <p>6 catalog information, Abbott would have an</p> <p>7 obligation to adhere to those laws.</p> <p>8 Q. Okay. Outside of the kind of big-sky</p> <p>9 picture that Abbott complies with laws, does Abbott</p> <p>10 have a position on whether or not those laws</p> <p>11 require Abbott to publish catalog or list prices</p> <p>12 that reflect the prices paid by providers?</p> <p>13 MS. CITERA: Same objections.</p> <p>14 BY THE WITNESS:</p> <p>15 A. To state Abbott's position would be to</p> <p>16 state a legal conclusion.</p> <p>17 Q. All right. Well, you haven't received an</p> <p>18 instruction not to answer. Would you please answer</p> <p>19 the question, sir?</p> <p>20 MS. CITERA: He doesn't have to. He's not</p> <p>21 here to testify about this, and so he doesn't have</p> <p>22 to. He's not being tendered to provide a legal</p>	<p style="text-align: right;">Page 694</p> <p>1 that as a company, that the -- providing</p> <p>2 information prior to 2001 would have led to</p> <p>3 misleading information.</p> <p>4 Q. Will you agree that the corporation</p> <p>5 recognized in 2001 that the way it had previously</p> <p>6 set and published prices would not pass public</p> <p>7 scrutiny?</p> <p>8 MS. CITERA: Object to the form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. From the testimony that I read and have</p> <p>12 heard about this matter, I believe the company made</p> <p>13 a decision in 2001 to conduct its business</p> <p>14 differently.</p> <p>15 Q. Do you believe that recognition in 2001</p> <p>16 about the nature of Abbott's past publication of</p> <p>17 catalog prices raises a compliance issue?</p> <p>18 MS. CITERA: Object to the form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I believe the question -- to say that it</p> <p>21 raises a compliance issue, compliance under our</p> <p>22 policies? Compliance under law?</p>

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<p style="text-align: right;">Page 695</p> <p>1 Q. A compliance under law, yes, sir. That's</p> <p>2 why you're here.</p> <p>3 A. I believe to state --</p> <p>4 MS. CITERA: Object to the form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. -- that an issue raises a compliance</p> <p>7 issue under law is stating a legal opinion.</p> <p>8 Q. Okay. So that again is a situation where</p> <p>9 as the corporate designee, you're unwilling to</p> <p>10 testify?</p> <p>11 A. I'm testifying in the manner in which I</p> <p>12 am and apparently not to your satisfaction.</p> <p>13 Q. Well, you know, leave me out of it, sir.</p> <p>14 It's not about me. I promise, okay. It's about</p> <p>15 the United States getting answers to their</p> <p>16 questions. It's about this case being able to be</p> <p>17 tried fairly.</p> <p>18 All I'm asking are the questions of you</p> <p>19 as the corporate designee under oath. And if</p> <p>20 you're willing to answer those, I would like your</p> <p>21 answers. If you're unwilling to answer, then we'll</p> <p>22 deal with that at the appropriate time.</p>	<p style="text-align: right;">Page 697</p> <p>1 Q. As the corporate designee, what steps, if</p> <p>2 any, did you take to gather all information</p> <p>3 reasonably available to the corporation as to the</p> <p>4 compliance efforts of Abbott in publishing WAC</p> <p>5 prices?</p> <p>6 A. I spoke with the people identified, the</p> <p>7 numerous people that I identified previously. I</p> <p>8 read through the documentation.</p> <p>9 Q. Did any of that information provide you</p> <p>10 with guidance on the steps that Abbott took to</p> <p>11 comply with all pertinent laws in its publication</p> <p>12 of WAC prices?</p> <p>13 A. Not directly.</p> <p>14 Q. Indirectly?</p> <p>15 A. Other than efforts to comply with laws</p> <p>16 generally.</p> <p>17 Q. Do you know anything about the</p> <p>18 publication of WAC prices by Abbott?</p> <p>19 MS. CITERA: Object to the form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Generally, just generally. I don't have</p>
<p style="text-align: right;">Page 696</p> <p>1 A. I stand by the answers I've provided.</p> <p>2 Q. Okay. Which in this instance is a</p> <p>3 refusal to answer because you believe it calls for</p> <p>4 a legal conclusion, correct?</p> <p>5 A. I believe that's an answer, though.</p> <p>6 Q. Okay. Now --</p> <p>7 MS. CITERA: Jarrett, are you almost done?</p> <p>8 MR. ANDERSON: Yeah. I've got one more line</p> <p>9 of questions.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Do you know of any steps that Abbott took</p> <p>12 in reporting WAC prices to comply with all</p> <p>13 pertinent laws?</p> <p>14 MS. CITERA: Object to the form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. The specific question is similar to</p> <p>17 broader questions asked previously, and I'd state</p> <p>18 that the compliance efforts were those adhered to</p> <p>19 in a manager -- in a report/reporting relationship</p> <p>20 and broader compliance advice and presentations and</p> <p>21 -- that would be -- and response, opportunity to</p> <p>22 respond to any questions asked.</p>	<p style="text-align: right;">Page 698</p> <p>1 --</p> <p>2 Q. What do you know?</p> <p>3 A. What do I know?</p> <p>4 Q. Yes, sir.</p> <p>5 MS. CITERA: Same objections.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Based on the -- based on the testimony I</p> <p>8 read from previous deposition testimony where that</p> <p>9 question would have been asked of the deponents --</p> <p>10 Q. Yeah.</p> <p>11 A. -- I understand Abbott provided list</p> <p>12 price on catalog price, published it, and would</p> <p>13 have provided it to pricing compendia.</p> <p>14 Q. Well, I'm not talking about the list and</p> <p>15 the catalog prices now, mind you. I'm talking</p> <p>16 about the WAC, W A C. What do you know about</p> <p>17 Abbott's publication of W A C prices?</p> <p>18 MS. CITERA: Objection to form, outside the</p> <p>19 scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know. I can't answer that.</p> <p>22 Q. Do you know anything about it?</p>

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<p style="text-align: right;">Page 699</p> <p>1 A. To my knowledge, no.</p> <p>2 Q. All right. And you didn't take any steps</p> <p>3 as the corporate designee to learn anything about</p> <p>4 it, did you?</p> <p>5 A. Other than what I described, no.</p> <p>6 Q. Other than what you've described didn't</p> <p>7 have anything to do with WAC prices, did it?</p> <p>8 A. Didn't learn anything in the</p> <p>9 communications I had.</p> <p>10 Q. Okay. Do you consider it to be a</p> <p>11 compliance if, on the one hand, prior to 2001,</p> <p>12 every single wholesaler that Abbott did business</p> <p>13 with was buying at one wholesale acquisition cost</p> <p>14 price, day in and day out but, on the other hand,</p> <p>15 the price that Abbott's publishing to the</p> <p>16 compendia, called WAC, is higher and different?</p> <p>17 MS. CITERA: I object to the form, outside the</p> <p>18 scope.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Not knowing -- not knowing very much</p> <p>21 about WAC, I think I'm not prepared to answer that</p> <p>22 question because I don't know enough about the one</p>	<p style="text-align: right;">Page 701</p> <p>1 information that was provided. And based on the</p> <p>2 question you've asked previously, you asked about</p> <p>3 list price and catalog price and now you're stating</p> <p>4 WAC price, I don't know that the three of those are</p> <p>5 necessarily synonymous. If they're not synonymous,</p> <p>6 then I wouldn't agree we provided WAC prices to the</p> <p>7 compendia. We provided list price.</p> <p>8 Q. Well, as I said before -- And I really do</p> <p>9 want to get through this. And we can stop for the</p> <p>10 day. Assume with me that you can set aside list</p> <p>11 price and catalog price for a moment, okay. I'm</p> <p>12 talking about a different pricing term. I'm</p> <p>13 talking about WAC, W A C, all right. Assume with</p> <p>14 me, sir, that Abbott did publish WAC prices to</p> <p>15 First DataBank and Red Book from time to time.</p> <p>16 A. Okay.</p> <p>17 Q. And assume with me that those prices were</p> <p>18 higher than the WAC prices that Abbott was actually</p> <p>19 charging wholesalers day in and day out from 1994</p> <p>20 through January of 2001.</p> <p>21 A. Okay.</p> <p>22 Q. Based on those assumptions, in your</p>
<p style="text-align: right;">Page 700</p> <p>1 component of the two-piece question that you're</p> <p>2 asking.</p> <p>3 Q. Well, take my representation to be true.</p> <p>4 And that is, the evidence will show that day in and</p> <p>5 day out, from 1994 through 2001, May of 2001 to be</p> <p>6 precise -- Well, I'm going to rephrase this to get</p> <p>7 it just right.</p> <p>8 Assume with me, sir, that the evidence in</p> <p>9 this case will show that from 1994 through January</p> <p>10 of 2001, every single wholesale transaction between</p> <p>11 Abbott and wholesalers occurred at WAC prices that</p> <p>12 were lower and different than the published WAC</p> <p>13 prices that Abbott sent to First DataBank and Red</p> <p>14 Book. If those -- Assume with me those</p> <p>15 representations are true, in your mind as the</p> <p>16 corporate designee on compliance issues, does that</p> <p>17 raise a compliance problem?</p> <p>18 MS. CITERA: Object to the form, outside the</p> <p>19 scope.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I have not -- In the information that I</p> <p>22 have gathered, I've not seen that in the</p>	<p style="text-align: right;">Page 702</p> <p>1 opinion, as the corporate designee on compliance</p> <p>2 matters for Abbott, does that raise a compliance</p> <p>3 problem?</p> <p>4 MS. CITERA: Objection to the form, outside</p> <p>5 the scope.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Assuming no other facts because you've</p> <p>8 given me a very limited set of facts, I don't know</p> <p>9 under what circumstances we were providing WAC</p> <p>10 prices to customers, contract, noncontract,</p> <p>11 different types of contracts, different commitments</p> <p>12 versus the WAC price provided to First Data and</p> <p>13 what was expected of that, if they were exactly the</p> <p>14 same and no other facts other than the set you've</p> <p>15 given me, that would raise a compliance issue.</p> <p>16 Q. Okay. Now, do you understand that the --</p> <p>17 currently that -- and since 2001, that the WAC</p> <p>18 price is the foundation for the list price at</p> <p>19 Abbott?</p> <p>20 A. I don't know that to be true.</p> <p>21 Q. Do you have any understanding that</p> <p>22 typically list prices on Abbott drugs are set at 5</p>

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<p>1 percent above WAC?</p> <p>2 A. I don't know the pricing policies of</p> <p>3 Abbott.</p> <p>4 Q. Do you have any understanding that WAC,</p> <p>5 since back in 1995 or so, was optimized from year</p> <p>6 to year and set based on the prevailing market</p> <p>7 prices?</p> <p>8 MS. CITERA: Object to the form, outside the</p> <p>9 scope.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I don't know. I don't have information</p> <p>12 that I can testify to regarding Abbott pricing</p> <p>13 policies.</p> <p>14 Q. Okay. And you didn't make any steps to</p> <p>15 learn of these pricing practices in your</p> <p>16 preparation to testify about Abbott's compliance in</p> <p>17 pricing, correct?</p> <p>18 A. Not specifically.</p> <p>19 Q. Okay. And would it surprise you to learn</p> <p>20 that although Abbott was optimizing these WACs from</p> <p>21 the mid '90s up to today, that those WACs didn't</p> <p>22 get published until 2001 miraculously?</p>	<p>1 the scope.</p> <p>2 BY THE WITNESS:</p> <p>3 A. What's the question? I want to make sure</p> <p>4 I answer the right question.</p> <p>5 (Record read as requested.)</p> <p>6 MS. CITERA: Objection, same objections.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I think that historical pricing practices</p> <p>9 would be a component of compliance.</p> <p>10 Q. But you, to prepare to testify, really</p> <p>11 haven't undertaken any efforts to learn what the</p> <p>12 historical pricing practices were, did you?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I did not gain a lot of information on</p> <p>16 that subject, no.</p> <p>17 Q. I didn't hear you.</p> <p>18 A. I did not gain a lot of information on</p> <p>19 that subject, no.</p> <p>20 Q. You really didn't gain any information on</p> <p>21 the subject, did you?</p> <p>22 MS. CITERA: Objection to the form.</p>
Page 704	Page 706
<p>1 MS. CITERA: Object to the form, outside the</p> <p>2 scope.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Published to whom?</p> <p>5 Q. To the pricing services such as First</p> <p>6 DataBank and Red Book.</p> <p>7 MS. CITERA: Same objections.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I'm not surprised or not -- I'm neither</p> <p>10 surprised nor not surprised because I don't know</p> <p>11 enough about the information of WAC pricing to know</p> <p>12 what expectation for me to react to that comment.</p> <p>13 MS. CITERA: Jarrett, Jarrett, Jarrett --</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. From a compliance perspective --</p> <p>16 MR. ANDERSON: I'll finish up on this.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. From a compliance perspective, sir, would</p> <p>19 you agree that it's difficult to know whether or</p> <p>20 not Abbott's complied with laws unless you</p> <p>21 understand the historical pricing practices?</p> <p>22 MS. CITERA: Objection to the form, outside</p>	<p>1 BY THE WITNESS:</p> <p>2 A. I wouldn't say -- I testified to what I</p> <p>3 understood and know.</p> <p>4 Q. Okay. And you'll agree that's very</p> <p>5 limited?</p> <p>6 MS. CITERA: Objection to the form. This is</p> <p>7 it, Jarrett. This is your last question.</p> <p>8 BY THE WITNESS:</p> <p>9 A. It's more limited than information, the</p> <p>10 questions you were asking me.</p> <p>11 MR. ANDERSON: All right. I guess we'll</p> <p>12 conclude for the day. I'm reserving my time and</p> <p>13 questions for the time of trial or appropriate</p> <p>14 continuation of this deposition.</p> <p>15 Ann?</p> <p>16 MS. ST. PETER-GRIFFITH: And, again, the</p> <p>17 United States when it passed the witness set forth</p> <p>18 its reservations.</p> <p>19 Thank you for your time, Mr. Fishman.</p> <p>20 THE WITNESS: Okay. Thank you.</p> <p>21 THE VIDEOGRAPHER: Going off the record at</p> <p>22 4:42 p.m. This ends the deposition of David</p>

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<p style="text-align: right;">Page 707</p> <p>1 Fishman. 2 (WHEREUPON, the deposition was 3 adjourned.) 4 5 6 7 8 _____ 9 DAVID FISHMAN 10 11 SUBSCRIBED AND SWORN to before me this 12 _____ day of _____, 2008. 13 14 15 16 17 18 _____ 19 NOTARY PUBLIC 20 21 22 My Commission expires:</p>	<p style="text-align: right;">Page 709</p> <p>1 2 In witness whereof, I have hereunto set my 3 hand and affixed my seal of office this 27th day of 4 March, A.D., 2008. 5 6 7 8 9 10 _____ 11 RACHEL F. GARD, CSR 12 CSR No. 084-003324 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 708</p> <p>1 UNITED STATES OF AMERICA) 2 NORTHERN DISTRICT OF ILLINOIS) 3 EASTERN DIVISION) SS. 4 STATE OF ILLINOIS) 5 COUNTY OF COOK) 6 I, Rachel F. Gard, Certified Shorthand 7 Reporter, do hereby certify that DAVID FISHMAN was first 8 duly sworn by me to testify to the whole truth and that 9 the above videotaped deposition was reported 10 stenographically by me and reduced to typewriting under 11 my personal direction. 12 I further certify that the said videotaped 13 deposition was taken at the time and place specified and 14 that the taking of said videotaped deposition commenced 15 on the 20th day of March, A.D., 2008, at 8:35 a.m. at 16 the offices of Jones Day, 77 West Wacker Drive, Suite 17 3500, Chicago, Illinois. 18 I further certify that I am not a relative or 19 employee or attorney or counsel of any of the parties, 20 nor a relative or employee of such attorney or counsel, 21 nor financially interested directly or indirectly in 22 this action.</p>	

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